

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

August 17, 2009

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

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 AUG 17 AM 11:48
CHIEF CLERKS OFFICE

Re: Executive Director's Response to Hearing Requests for Aqua Water Supply Corporation;
Permit No. WQ0014833001; Docket No. 2009-0896-MWD

Dear Ms. Castañuela:

Enclosed for filing are the original and seven copies of the "Executive Director's Response to Hearing Requests." If you have any questions or comments, please call me at (512) 239-5692.

Sincerely,

A handwritten signature in cursive script that reads "Celia Castro".

Celia Castro
Staff Attorney
Environmental Law Division

Enclosure

DOCKET NUMBER 2009-0896-MWD

2009 AUG 17 AM 11:48

APPLICATION BY	§	BEFORE THE	CHIEF CLERKS OFFICE
	§		
AQUA WATER SUPPLY CORP.	§	TEXAS COMMISSION ON	
	§		
PERMIT NO. WQ0014833001	§	ENVIRONMENTAL	QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. Introduction

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests (Response) on the application by Aqua Water Supply Corporation (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) permit, No. WQ0014833001.

The following individuals submitted timely hearing requests:

Bennie & Elizabeth Wallace; Darren Carroll; William & Darlene Pendell; River Crossing Improvement Association (RCIA) (represented by Catherine Roberts, Bryce Johnson, Marcy Bernasconi, Bill Pendell, and Dinah Van Peski as Board of Directors); Lower Colorado River Authority (LCRA), represented by Leigh Sebastian; Rick Clemens; and Lori Zimmerman. LCRA withdrew its hearing request on May 18, 2009.

Attached for Commission consideration are the following:

Attachment A	Statement of Basis/Technical Summary and Executive Director's Preliminary Decision
Attachment B	Draft Permit
Attachment C	Compliance History
Attachment D	Executive Director's Response to Public Comments (RTC)
Attachment E	Executive Director's Satellite Map
Attachment F	Applicant's Landowners Map and Legend

Copies of the documents were provided to all parties. The Office of the Chief Clerk previously mailed the RTC to all persons on the mailing list.

II. Facility Description

TCEQ received an application on July 9, 2007 from South Central Water Company for a new permit, proposed TPDES Permit No. WQ0014833001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day (gpd). On November 19, 2008, TCEQ received an amended application from Aqua Water Supply Corporation, listing Aqua Water Supply Corporation as the sole Applicant. The Applicant also amended the application by reducing the daily average flow from three phases (50,000, 150,000, and 750,000 gpd) to two phases (50,000 gpd in the interim phase and 250,000 gpd in the final phase). The proposed wastewater treatment facility would serve the Double Eagle Ranch Service Area and would be located approximately 1.25 miles north of the intersection of Old 71 and Highway 71 in Bastrop County, Texas.

The Double Eagle Ranch Wastewater Treatment Facility would be an activated sludge process plant operated in the complete mix single stage nitrification mode. Treatment units would include bar screens, aeration basins, final clarifiers, sludge digesters, and a chlorine contact chamber. The Applicant has not constructed the facility. The draft permit would authorize the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

The treated effluent would be discharged to Moss Branch; then to Dry Creek; then to the Colorado River Below Town Lake in Segment No. 1428 of the Colorado River Basin. The unclassified receiving water uses are high aquatic life uses for Moss Branch and Dry Creek. The designated uses for Segment No. 1428 are exceptional aquatic life uses, public water supply, and contact recreation. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Segment No. 1428, which has been identified as having exceptional aquatic life use. Existing uses will be maintained and protected.

III. Procedural Background

TCEQ received the original permit application from South Central Water Company on July 9, 2007, and declared it administratively complete on July 20, 2007. The Applicant published the Notice of Application and Intent to Obtain Water Quality Permit (NORI) on August 25, 2007 in *The Bastrop Advertiser*. The Applicant published the Notice of Application and Preliminary Decision (NAPD) on October 11, 2007 in *The Bastrop Advertiser*. TCEQ held a public meeting on July 15, 2008, and the public comment period ended at the close of the meeting. Due to significant public interest, Aqua Water Supply Corporation filed an amended application on November 19, 2008, listing itself as the sole Applicant. On February 5, 2009, the Applicant published a combined NORI and NAPD in Spanish in *Ahora si!* and in English in *The Bastrop Advertiser*. The Applicant also published the combined notice on February 6, 2009 in the *Austin American- Statesman*. The extended public comment period ended on March 9, 2009. The ED filed the RTC on May 8, 2009, and the period for requesting reconsideration or a

contested case hearing ended on June 10, 2009. Since this application was administratively complete after September 1, 1999, it is subject to House Bill 801 (76th Legislature, 1999).

IV. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. For those applications declared administratively complete on or after September 1, 1999, it established new procedures for providing public notice and public comment, and for the Commission's consideration of hearing requests. The application was declared administratively complete on January 26, 2007 and therefore is subject to the HB 801 requirements. The Commission implemented HB 801 by adopting procedural rules in 30 Texas Administrative Code (30 TAC) Chapters 39, 50, and 55. The regulations governing requests for contested case hearings are found at 30 TAC, Chapter 55.

A. Responses to Requests

"The Executive Director, the public interest counsel, and applicant may submit written responses to [hearing] requests . . ." 30 TAC §55.209(d).

Responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements.

A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided . . . and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment.

30 TAC §55.201(c).

A hearing request must substantially comply with the following:

- (1) give the time, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. Requirement that Requestor be an "Affected Person"

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected person."

- (a) For any application, 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. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (1) whether the interest claimed is one protected by the law under which the application will be considered;
 - (2) distance restrictions or other limitations imposed by law on the affected interest;
 - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;

- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

D. Additional Requirements if Requestor is a Group or Association

A group or association may request a contested case hearing only if the group or association meets all of the following requirements:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect or germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

30 TAC § 55.205(a).

E. Referral to the State Office of Administrative Hearings

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(b).

The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue:

- (1) involves a disputed question of fact;
- (2) was raised during the public comment period; and
- (3) is relevant and material to the decision on the application.

30 TAC § 50.115(c).

V. Analysis of the Requests

A. Analysis of the Hearing Requests

1. Whether the Requestors Complied With 30 TAC §§ 55.201(c) and (d)

Bennie & Elizabeth Wallace; Darren Carroll; William & Darlene Pendell; River Crossing Improvement Association (represented by Catherine Roberts, Bryce Johnson, Marcy Bernasconi,

Bill Pendell, and Dinah Van Peski as Board of Directors); Rick Clemens; and Lori Zimmerman submitted timely written hearing requests that included relevant contact information and raised disputed issues.

The ED recommends the Commission find that the hearing requests of Bennie & Elizabeth Wallace; Darren Carroll; William & Darlene Pendell; River Crossing Improvement Association (represented by Catherine Roberts, Bryce Johnson, Marcy Bernasconi, Bill Pendell, and Dinah Van Peski as Board of Directors); Rick Clemens; and Lori Zimmerman substantially comply with the requirements of 30 TAC § 55.201(c) & (d).

2. *Whether the Requestors Met the Requirements of an Affected Person*

Bennie & Elizabeth Wallace

The Wallaces state that their home is in the River Crossing subdivision, less than one mile from the site of the proposed facility. They state that they own property in a neighborhood adjacent to the proposed site, but do not claim adjacency to the discharge route. According to the Applicant, there are properties between the subdivision and the site. In addition, the Applicant's map does not list them as adjacent or downstream landowners (See Attachment F). They raise issues, including pollution, erosion, noise, odor, alternate location sites, and quality of life. However, they also fall outside the buffer zone.

Pursuant to the laws under which a wastewater discharge permit application is considered, in order to control and abate nuisance odors from wastewater treatment plant units, 30 TAC § 309.13(e) requires an applicant to comply with 1 of 3 alternative requirements:

- 1) ownership or other sufficient property interest of the buffer zone: 150 feet (aerobic lagoons and other wastewater treatment plant units) or 500 feet (anaerobic lagoons);
- 2) submission of nuisance odor prevention engineering report for approval; or
- 3) submission of sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by applicant.

Based upon these buffer zone distance requirements, the rule is only intended to protect property interests within either 150 feet or 500 feet of the wastewater treatment plant units. With respect to nuisance odors, other interests are not protected under the laws considered during review of a wastewater discharge permit application. Only adjacent landowners or non-adjacent landowners who allege that they own property within the buffer zone area, are sufficiently close enough to the treatment plant units to have a justiciable interest to dispute the Applicant's claim of ownership (or other property interest) of the buffer zone, legal restrictions prohibiting residential structures within the buffer zone, or the adequacy of the nuisance odor prevention report. The Applicant has indicated that they will meet the buffer zone requirements by ownership. Additionally, wastewater treatment plants are subject to the air permit-by-rules in 30 TAC § 106.531 (relating to Sewage Treatment Facility) and § 106.532 (relating to Water and Wastewater Treatment). These rules do not include the right to a contested case hearing. In addition, nuisance odor complaints are subject to investigation and enforcement pursuant to 30

TAC § 101.4 (relating to Nuisance) and the Commission's enforcement authority in Chapter 7 of the Texas Water Code.

A reasonable relationship does not exist between the interest claimed and the proposed activity. Based on the location of their property, they have not demonstrated that the discharge will affect their health, safety, or use of their property or natural resources. 30 TAC § 55.203(c). Therefore, they have not raised personal justiciable interests that may be affected by the application. The ED concludes they are not affected persons.

The ED recommends the Commission find that Bennie & Elizabeth Wallace are not affected persons under the requirements of 30 TAC § 55.203.

Darren Carroll

Mr. Carroll states that he lives in the River Crossing subdivision and that his home is less than a half-mile from the proposed site, but does not claim adjacency to the discharge route. He raises concerns about adverse environmental impacts on marine life, area wildlife, noise, vibrations, odors (and other air pollution), location site, and quality of life. However, the Applicant's map does not list him as an adjacent or downstream landowner and his residence falls outside the buffer zone (See Attachment F).

Pursuant to the laws under which a wastewater discharge permit application is considered, in order to control and abate nuisance odors from wastewater treatment plant units, 30 TAC § 309.13(e) requires an applicant to comply with 1 of 3 alternative requirements:

- 1) ownership or other sufficient property interest of the buffer zone: 150 feet (aerobic lagoons and other wastewater treatment plant units) or 500 feet (anaerobic lagoons);
- 2) submission of nuisance odor prevention engineering report for approval; or
- 3) submission of sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by applicant.

Based upon these buffer zone distance requirements, the rule only intended to protect property interests within either 150 feet or 500 feet of the wastewater treatment plant units. With respect to nuisance odors, other interests are not protected under the laws considered during review of a wastewater discharge permit application. Only adjacent landowners or non-adjacent landowners who allege that they own property within the buffer zone area, are sufficiently close enough to the treatment plant units to have a justiciable interest to dispute the Applicant's claim of ownership (or other property interest) of the buffer zone, legal restrictions prohibiting residential structures within the buffer zone, or the adequacy of the nuisance odor prevention report. The Applicant has indicated that they will meet the buffer zone requirements by ownership. With respect to air pollution, wastewater treatment plants are subject to the air permit-by-rules in 30 TAC § 106.531 (relating to Sewage Treatment Facility) and § 106.532 (relating to Water and Wastewater Treatment). These rules do not include the right to a contested case hearing. In addition, nuisance odor complaints are subject to investigation and enforcement pursuant to 30

TAC § 101.4 (relating to Nuisance) and the Commission's enforcement authority in Chapter 7 of the Texas Water Code.

A reasonable relationship does not exist between the interest claimed and the proposed activity. Based on the location of his property, he has not demonstrated that the discharge will affect his health, safety, or use of his property or natural resources. 30 TAC § 55.203(c). Therefore, he has not raised personal justiciable interests that may be affected by the application. The ED concludes they are not affected persons.

The ED recommends the Commission find that Darren Carroll is not an affected person under the requirements of 30 TAC § 55.203.

William & Darlene Pendell

The Pendells state that their home is in the River Crossing subdivision next to the land where the proposed site would be located, but do not claim adjacency to the discharge route. According to the Applicant, there are properties between the subdivision and the site. In addition, the Applicant's map does not list them as adjacent or downstream landowners (See Attachment F). They have concerns about possible environmental impact, including flooding issues that may affect water quality. However, they also fall outside the buffer zone. A reasonable relationship does not exist between the interest claimed and the proposed activity. Based on the location of their property, they have not demonstrated that the discharge will affect their health, safety, or use of their property or natural resources. 30 TAC § 55.203(c). Therefore, they have not raised personal justiciable interests that may be affected by the application. The ED concludes they are not affected persons.

The ED recommends the Commission find that William & Darlene Pendell are not affected persons under the requirements of 30 TAC § 55.203.

Rick Clemens

Mr. Clemens states that he lives in the River Crossing subdivision, less than one mile from the site of the proposed facility, but does not claim adjacency to the discharge route. He claims he would be adversely affected due to noise, vibrations and other air pollution that would impact his quality of life. In addition, he is concerned about the negative impact on area wildlife, including marine life, and aesthetic detriment. Should TCEQ grant the permit, he wants TCEQ to require relocation of the facility or impose more stringent effluent limits. However, the Applicant's map does not list him as an adjacent or downstream landowner (See Attachment F) and his residence falls outside the buffer zone.

Pursuant to the laws under which a wastewater discharge permit application is considered, in order to control and abate nuisance odors from wastewater treatment plant units, 30 TAC § 309.13(e) requires an applicant to comply with 1 of 3 alternative requirements:

- 1) ownership or other sufficient property interest of the buffer zone: 150 feet (aerobic lagoons and other wastewater treatment plant units) or 500 feet (anaerobic lagoons);
- 2) submission of nuisance odor prevention engineering report for approval; or
- 3) submission of sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by applicant.

Based upon these buffer zone distance requirements, the rule only intended to protect property interests within either 150 feet or 500 feet of the wastewater treatment plant units. With respect to nuisance odors, other interests are not protected under the laws considered during review of a wastewater discharge permit application. Only adjacent landowners or non-adjacent landowners who allege that they own property within the buffer zone area, are sufficiently close enough to the treatment plant units to have a justiciable interest to dispute the Applicant's claim of ownership (or other property interest) of the buffer zone, legal restrictions prohibiting residential structures within the buffer zone, or the adequacy of the nuisance odor prevention report. The Applicant has indicated that they will meet the buffer zone requirements by ownership. With respect to air pollution, wastewater treatment plants are subject to the air permit-by-rules in 30 TAC § 106.531 (relating to Sewage Treatment Facility) and § 106.532 (relating to Water and Wastewater Treatment). These rules do not include the right to a contested case hearing. In addition, nuisance odor complaints are subject to investigation and enforcement pursuant to 30 TAC § 101.4 (relating to Nuisance) and the Commission's enforcement authority in Chapter 7 of the Texas Water Code.

A reasonable relationship does not exist between the interest claimed and the proposed activity. Based on the location of his property, he has not demonstrated that the discharge will affect his health, safety, or use of his property or natural resources. 30 TAC § 55.203(c). Therefore, he has not raised personal justiciable interests that may be affected by the application. The ED concludes that he is not an affected person. Therefore, he has not raised personal justiciable interests that may be affected by the application.

The ED recommends the Commission find that Rick Clemens is not an affected person under the requirements of 30 TAC § 55.203.

Lori Zimmerman

Ms. Zimmerman states that she lives in the River Crossing subdivision, less than a quarter-mile from the site of the proposed facility. She does not claim adjacency to the discharge route. She claims she would be adversely affected due to noise, vibrations and other air pollution that would impact her quality of life. In addition, she is concerned about the negative impact on area wildlife, including marine life, and aesthetic detriment. If TCEQ grants the permit, she wants TCEQ to require relocation of the facility or impose more stringent effluent limits. However, the Applicant's map does not list her as an adjacent or downstream landowner (See Attachment F) and her residence falls outside the buffer zone.

Pursuant to the laws under which a wastewater discharge permit application is considered, in order to control and abate nuisance odors from wastewater treatment plant units, 30 TAC § 309.13(e) requires an applicant to comply with 1 of 3 alternative requirements:

- 1) ownership or other sufficient property interest of the buffer zone: 150 feet (aerobic lagoons and other wastewater treatment plant units) or 500 feet (anaerobic lagoons);
- 2) submission of nuisance odor prevention engineering report for approval; or
- 3) submission of sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by applicant.

Based upon these buffer zone distance requirements, the rule only intended to protect property interests within either 150 feet or 500 feet of the wastewater treatment plant units. With respect to nuisance odors, other interests are not protected under the laws considered during review of a wastewater discharge permit application. Only adjacent landowners or non-adjacent landowners who allege that they own property within the buffer zone area, are sufficiently close enough to the treatment plant units to have a justiciable interest to dispute the Applicant's claim of ownership (or other property interest) of the buffer zone, legal restrictions prohibiting residential structures within the buffer zone, or the adequacy of the nuisance odor prevention report. The Applicant has indicated that they will meet the buffer zone requirements by ownership. With respect to air pollution, wastewater treatment plants are subject to the air permit-by-rules in 30 TAC § 106.531 (relating to Sewage Treatment Facility) and § 106.532 (relating to Water and Wastewater Treatment). These rules do not include the right to a contested case hearing. In addition, nuisance odor complaints are subject to investigation and enforcement pursuant to 30 TAC § 101.4 (relating to Nuisance) and the Commission's enforcement authority in Chapter 7 of the Texas Water Code.

A reasonable relationship does not exist between the interest claimed and the proposed activity. Based on the location of her property, she has not demonstrated that the discharge will affect her health, safety, or use of her property or natural resources. 30 TAC § 55.203(c). Therefore, she has not raised personal justiciable interests that may be affected by the application. The ED concludes that she is not an affected person.

The ED recommends the Commission find that Lori Zimmerman is not an affected person under the requirements of 30 TAC § 55.203.

River Crossing Improvement Association

The Board of Directors (Catherine Roberts, Bryce Johnson, Marcy Bernasconi, Bill (William) Pendell, and Dinah Van Peski) state that their homes are in the River Crossing subdivision next to the land where the proposed site would be located, and that they speak on behalf of the entire membership of the RCIA as well as the residents of River Crossing. They claim they would be adversely affected due to noise, vibrations, and other air pollution that would impact their quality of life. In addition, they are concerned about the negative impact on area wildlife, including marine life, and aesthetic detriment. Should TCEQ grant the permit, they

want TCEQ to require relocation of the facility or impose more stringent effluent limits. The ED finds that the interests that the RCIA seeks to protect are germane to the organization's purpose.

To satisfy the group/association requirements of 30 TAC § 55.205(a), Bill (William) Pendell identified himself as a member and spokesperson for the RCIA. Mr. Pendell was the only Board member that provided a physical address in their hearing request. The ED's Satellite map (Attachment E) shows the relative location of Mr. Pendell in relation to the facility. As previously discussed above, the ED has concluded that Mr. Pendell is not an affected person. Therefore, at this time, based on the available information, the RCIA and its individual members have not shown a personal justiciable interest and no standing to request a hearing in their own right. The RCIA has failed to meet the requirements set out in § 55.205(a).

The ED recommends the Commission find that the River Crossing Improvement Association does not meet the associational requirements of 30 TAC § 55.205(a) because member and spokesperson Bill Pendell does not have a personal justiciable interest and no standing to request a hearing in his own right.

B. *Whether the Issues Raised are Referable to SOAH for a Contested Case Hearing*

The ED has analyzed the issues raised in accordance with the regulatory criteria. The issues discussed were raised during the public comment period and addressed in the RTC. None of the issues were withdrawn. The issues raised for this application and the ED's analysis and recommendations follow.

1. *Whether TCEQ should require effluent limitations stringent enough to protect water quality? (RTC # 1 & 17)*

This issue was raised and addressed in the ED's Response to Public Comment (RTC) numbers 1 and 17. This issue is within TCEQ's jurisdiction, involves a question of fact, was raised during the public comment period, and was not withdrawn. The issue raises water quality concerns, including protection of human health and safety, as a result of the proposed operation of the facility. This issue is relevant and material to a decision on the permit application.

The Executive Director concludes that this issue is relevant and material and recommends referral to SOAH.

2. *Whether the proposed activity satisfies regulatory requirements intended to address odor? (RTC # 4)*

This issue was raised and addressed in the ED's Response to Public Comment (RTC) number 4. This issue is within TCEQ's jurisdiction, involves a mixed question of fact and law, was raised during the public comment period, and was not withdrawn. Pursuant to the laws under which a wastewater discharge permit application is considered, in order to control and

abate nuisance odors from wastewater treatment plant units, 30 TAC § 309.13(e) requires an applicant to comply with 1 of 3 alternative requirements:

- 1) ownership or other sufficient property interest of the buffer zone: 150 feet (aerobic lagoons and other wastewater treatment plant units) or 500 feet (anaerobic lagoons);
- 2) submission of nuisance odor prevention engineering report for approval; or
- 3) submission of sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by applicant.

Based upon these buffer zone distance requirements, the rule only intended to protect property interests within either 150 feet or 500 feet of the wastewater treatment plant units. With respect to nuisance odors, other interests are not protected under the laws considered during review of a wastewater discharge permit application. Only adjacent landowners or non-adjacent landowners who allege that they own property within the buffer zone area, are sufficiently close enough to the treatment plant units to have a justiciable interest to dispute the Applicant's claim of ownership (or other property interest) of the buffer zone, legal restrictions prohibiting residential structures within the buffer zone, or the adequacy of the nuisance odor prevention report. The Applicant has indicated that they will meet the buffer zone requirements by ownership. With respect to air pollution, wastewater treatment plants are subject to the air permit-by-rules in 30 TAC § 106.531 (relating to Sewage Treatment Facility) and § 106.532 (relating to Water and Wastewater Treatment). These rules do not include the right to a contested case hearing. In addition, nuisance odor complaints are subject to investigation and enforcement pursuant to 30 TAC § 101.4 (relating to Nuisance) and the Commission's enforcement authority in Chapter 7 of the Texas Water Code. Therefore, this issue is not relevant and material to a decision on the permit application.

The Executive Director concludes that this issue is not relevant and material and does not recommend referral to SOAH.

3. Whether the proposed activity would have adverse environmental impacts on wildlife and marine life? (RTC # 1)

This issue was raised and addressed in the ED's Response to Public Comment (RTC) number 1. This issue is within TCEQ's jurisdiction, involves a question of fact, was raised during the public comment period, and was not withdrawn. Therefore, this issue is relevant and material to a decision on the permit application.

The Executive Director concludes that this issue is relevant and material and recommends referral to SOAH.

4. Whether the Applicant should be required to use a different technology, i.e. Membrane Bioreactor (MBR)? (RTC # 7)

This issue was raised and addressed in the ED's Response to Public Comment (RTC)

number 1. This issue is within TCEQ's jurisdiction, involves a question of fact, was raised during the public comment period, and was not withdrawn. 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 regulations. In addition to location, method of conveyance and disposal, or type of facility, the ED cannot mandate an applicant to use a particular type or level of effluent treatment if the proposed discharge meets the Texas Surface Water Quality Standards (TSWQS). Therefore, this issue is not relevant and material to a decision on the permit application.

The Executive Director concludes that this issue is not relevant and material and does not recommend referral to SOAH.

5. Whether the Applicant should be required to change the outfall location? (RTC # 8)

This issue was raised and addressed in the ED's Response to Public Comment (RTC) number 8. Currently, the Applicant submits an application to the ED and the staff evaluates it for compliance with TCEQ rules, including the Texas Surface Water Quality Standards (TSWQS). Alternatives to discharge locations are not considered in the wastewater permitting process. Therefore, this issue is not relevant and material to a decision on the permit application.

The Executive Director concludes that this issue is not relevant and material and does not recommend referral to SOAH.

6. Whether the proposed permitted flow in the draft permit would contribute to erosion and flooding conditions in the area? (RTC # 9, 16)

This issue was raised and addressed in the ED's Response to Public Comment (RTC) numbers 9 and 16. This issue involves a question of fact, was raised during the public comment period, and was not withdrawn. However, this issue is not assessed during the wastewater permitting process. This issue is not relevant and material to a decision on the permit application.

The Executive Director concludes that this issue is not relevant and material and does not recommend referral to SOAH.

7. Whether the proposed facility will create noise, vibration, or aesthetic impacts that could adversely affect the use and enjoyment of the requesters' property and overall quality of life? (RTC # 3)

This issue was raised and addressed in the ED's Response to Public Comment (RTC) number 3. This issue involves a question of fact, was raised during the public comment period, and was not withdrawn. Noise and vibration concerns are issues not assessed during the wastewater permitting process. General assertions of aesthetic detriments are not assessed in the wastewater permitting process. Therefore, these issues are not relevant and material to a decision on the permit application.

The Executive Director concludes that this issue is not relevant and material and does not recommend referral to SOAH.

VII. Duration of the Contested Case Hearing

The ED recommends a nine-month duration for a contested case hearing on this matter, should there be one, between preliminary hearing and the presentation of a proposal for decision.

VIII. Executive Director's Recommendation

The ED recommends the following actions by the Commission:

1. The ED recommends that the Commission deny all the hearing requests.
2. If the Commission finds that any of the requesters are affected persons, the ED recommends referral of Issues 1 and 3 to SOAH for a proceeding of nine months duration.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By Celia Castro

Celia Castro, Staff Attorney
Environmental Law Division
State Bar No. 03997350
P.O. Box 13087, MC-173
Austin, Texas 78711-3087
(512) 239-5692
(512) 239-0606 (Fax)

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on August 17, 2009, the original and seven copies of the "Executive Director's Response to Hearing Requests" for Aqua Water Supply Corporation, TPDES Permit No. WQ0014833001, were filed with the TCEQ's Office of the Chief Clerk and a complete copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submission, or by deposit in the U.S. Mail.

Celia Castro

Celia Castro, Staff Attorney
Environmental Law Division
State Bar No. 03997350

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY
2009 AUG 17 AM 11:48
CHIEF CLERKS OFFICE

MAILING LIST
For
Aqua Water Supply Corporation
TPDES Permit No. WQ0014833001

FOR THE APPLICANT

Carol Kostelka
Aqua Water Supply Corporation
Drawer P
Bastrop, Texas 78602-1989

David Klein
Lloyd Gosselink Rochelle & Townsend
816 Congress Avenue, Suite 1900
Austin, Texas 78701

FOR THE EXECUTIVE DIRECTOR

via electronic mail:

Michael Redda, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division MC-148
P.O. Box 13087
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
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL

via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK

via E-Filing:

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

PROTESTANTS

Darren S. Carroll
295 Colorado Drive
Cedar Creek, Texas 78612-3488

Darlene & William Pendell
205 Sabine Drive
Cedar Creek, Texas 78612-3585

River Crossing Improvement Association
c/o Pioneer Property Management
P.O. Box 3485
Austin, Texas 78764-3485

Rick Clemens
142 Llano Court
Cedar Creek, Texas 78612-3405

Bennie & Elizabeth F. Wallace
450 Colorado Drive
Cedar Creek, Texas 78612-3580

Lori Zimmerman
141 Llano Court
Cedar Creek, Texas 78612-3405

INTERESTED PERSONS

Shirley Adams
164 Saldana Drive
Cedar Creek, Texas 78612-3394

The Honorable Robert L. "Robby" Cook
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Executive Director's
Attachment A

**STATEMENT OF BASIS/TECHNICAL SUMMARY
AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION**

DESCRIPTION OF APPLICATION

Applicant: Aqua Water Supply Corporation;
Texas Pollutant Discharge Elimination System (TPDES) Permit No.
WQ0014833001, TX0129844

Regulated Activity: Domestic Wastewater Permit

Type of Application: New Permit

Request: New Permit

Authority: Federal Clean Water Act (CWA) §402; Texas Water Code (TWC) §26.027;
30 TAC Chapters 30, 305, 307, 309, 312, and 319; Commission policies;
and EPA guidelines.

EXECUTIVE DIRECTOR RECOMMENDATION

The executive director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The proposed permit includes an expiration date of **September 01, 2013** according to 30 TAC §305.71, Basin Permitting.

REASON FOR PROJECT PROPOSED

The applicant has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.05 million gallons per day in the interim phase and a daily average flow not to exceed 0.25 million gallons per day in the final phase. The proposed wastewater treatment facility will serve the Double Eagle Ranch Service Area.

PROJECT DESCRIPTION AND LOCATION

The Double Eagle Ranch Wastewater Treatment Facility will be an activated sludge process plant operated in the complete mix single stage nitrification mode. Treatment units will include bar screens, aeration basins, final clarifiers, sludge digesters and chlorine contact chamber. The facility has not been constructed.

The draft permit authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

The plant site will be located approximately 1.25 miles north of the intersection of Old 71 and Highway 71 in Bastrop County, Texas.

The treated effluent will be discharged to Moss Branch; thence to Dry creek; thence to the Colorado River Below Town Lake in Segment No. 1428 of the Colorado River Basin. The unclassified receiving water uses are high aquatic life uses for Moss Branch and Dry Creek. The designated uses for Segment No. 1428 are exceptional aquatic life uses, public water supply and contact recreation. The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to

protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Segment 1428, which has been identified as having exceptional aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Effluent limitations for the conventional effluent parameters (i.e., Biochemical Oxygen Demand or Carbonaceous Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on stream standards and waste load allocations for water quality limited streams as established in the Texas Water Quality Standards and the water quality management plan.

The effluent limits recommended above have been reviewed for consistency with the State of Texas Water Quality Management Plan (WQMP). The recommended limits are not contained in the approved WQMP. However, these limits will be included in the next WQMP update. A Waste Load Evaluation has not been prepared for Segment 1428.

No priority watershed of critical concern has been identified in Segment 1428. However, the Houston Toad (*Bufo houstonensis* Sanders), an endangered species, is known to occur in Bastrop County. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES; September 14, 1998, October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only consider aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. Species distribution information for the Bastrop County is provided by the United States Fish and Wildlife Service and documents the toad's presence solely in the vicinity of Alum Creek, Copperas Creek, Gills Branch, Piney Creek, Marshy Branch, Price Creek, and Puss Hollow in Bastrop County, which are located further downstream in a different segment from the facility associated with this permit action. Based upon this information, it is determined that the facility's discharge is not expected to impact the Houston Toad. The permit does not require EPA review with respect to the presence of endangered or threatened species.

Segment 1428 is currently listed on the State's inventory of impaired and threatened waters (the 2008 Clean Water Act Section 303(d) list). The listing is specifically for elevated levels of bacteria from the Walnut Creek to Longhorn Dam (AU 1428_03). This facility is designed to provide adequate disinfection and when operated properly should not add to the bacterial impairment of the segment. In addition, in order to ensure that the proposed discharge meets the stream bacterial standard, an effluent limitation of 126 colonies *E. coli* per 100 ml has been added to the draft permit.

SUMMARY OF EFFLUENT DATA

Not applicable for a new permit.

PROPOSED PERMIT CONDITIONS

The draft permit authorizes a discharge of treated domestic wastewater at an interim volume not to exceed a daily average flow of 0.05 million gallons per day and a final volume not to exceed a daily average flow of 0.25 million gallons per day.

The effluent limitations in both phases of the draft permit, based on a 30-day average, are 5 mg/l CBOD₅, 5 mg/l TSS, 2 mg/l NH₃-N, 1 mg/l Total Phosphorus, 126 colonies *E. coli* per 100 ml 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 permittee shall comply with the requirements of 30 TAC §309.13 (a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC §309.13(e).

SUMMARY OF CHANGES FROM APPLICATION

None.

SUMMARY OF CHANGES FROM EXISTING PERMIT

Not applicable.

BASIS FOR PROPOSED DRAFT PERMIT

The following items were considered in developing the proposed permit draft:

1. Application received July 09, 2007 and additional information received on August 12, 2008 and November 19, 2008.
2. The effluent limitations and/or conditions in the draft permit comply with the Texas Surface Water Quality Standards, 30 TAC §§307.1 - 307.10. The effluent limitations and/or conditions in the draft permit comply with the requirements in Watershed Protection, 30 TAC Chapter 311, Subchapter E: Colorado River Watershed.
3. The effluent limitations in the draft permit meet the requirements for secondary treatment and the requirements for disinfection according to 30 TAC Chapter 309, Subchapter A: Domestic Wastewater Effluent Limitations.
4. Interoffice memoranda from the Water Quality Assessment Section of the TCEQ Water Quality Division.
5. Consistency with the Coastal Management Plan: The facility is not located in the Coastal Management Program boundary.
6. "Procedures to Implement the Texas Surface Water Quality Standards", Texas Commission on Environmental Quality, January 2003.
7. Texas 2004 Clean Water Act §303(d) List, Texas Commission on Environmental Quality, May 13, 2005; approved by USEPA on May 8, 2006.
8. TNRCC Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits, Document No. 98-001.000-OWR-WQ, May 1998.

PROCEDURES FOR FINAL DECISION

When an application is declared administratively complete, the Chief Clerk sends a letter to the applicant advising the applicant to publish the Notice of Receipt of Application and Intent to Obtain Permit in the newspaper. In addition, the Chief Clerk instructs the applicant to place a copy of the application in a public place for review and copying in the county where the facility is or will be located. This application will be in a public place throughout the comment period. The Chief Clerk also mails this notice to any interested persons and, if required, to landowners identified in the permit application. This notice informs the public about the application, and provides that an interested person may file comments on the application or request a contested case hearing or a public meeting.

Once a draft permit is completed, it is sent, along with the Executive Director's preliminary decision, as contained in the technical summary or fact sheet, to the Chief Clerk. At that time, Notice of Application and Preliminary Decision will be mailed to the same people and published in the same newspaper as the prior notice. This notice sets a deadline for making public comments. The applicant must place a copy of the Executive Director's preliminary decision and draft permit in the public place with the application. This notice sets a deadline for public comment.

Any interested person may request a public meeting on the application until the deadline for filing public comments. A public meeting is intended for the taking of public comment, and is not a contested case proceeding.

After the public comment deadline, the Executive Director prepares a response to all significant public comments on the application or the draft permit raised during the public comment period. The Chief Clerk then mails the Executive Director's Response to Comments and Final Decision to people who have filed comments, requested a contested case hearing, or requested to be on the mailing list. This notice provides that if a person is not satisfied with the Executive Director's response and decision, they can request a contested case hearing or file a request to reconsider the Executive Director's decision within 30 days after the notice is mailed.

The Executive Director will issue the permit unless a written hearing request or request for reconsideration is filed within 30 days after the Executive Director's Response to Comments and Final Decision is mailed. If a hearing request or request for reconsideration is filed, the Executive Director will not issue the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

If the Executive Director calls a public meeting or the Commission grants a contested case hearing as described above, the Commission will give notice of the date, time, and place of the meeting or hearing. If a hearing request or request for reconsideration is made, the Commission will consider all public comments in making its decision and shall either adopt the Executive Director's response to public comments or prepare its own response.

For additional information about this application contact Michael Abraha Redda at (512) 239-4631.

Michael Abraha Redda
Municipal Permits Team
Wastewater Permitting Section (MC 148)

January 07, 2009
Date

Executive Director's
Attachment B



TPDES PERMIT NO. WQ0014833001
*[For TCEQ office use only -
EPA I.D. No. TX0129844]*

TEXAS COMMISSION ON ENVIRONMENTAL
QUALITY
P.O. Box 13087
Austin, Texas 78711-3087

PERMIT TO DISCHARGE WASTES
under provisions of
Section 402 of the Clean Water Act
and Chapter 26 of the Texas Water Code

Aqua Water Supply Corporation

whose mailing address is

P.O. Box P
Bastrop, Texas 78602-1989

is authorized to treat and discharge wastes from the Double Eagle Ranch Wastewater Treatment Facility, SIC Code 4952

located approximately 1.25 miles north of the intersection of Old 71 and Highway 71 in Bastrop County, Texas to Moss Branch; thence to Dry creek; thence to the Colorado River Below Town Lake in Segment No. 1428 of the Colorado River Basin

only according with effluent limitations, monitoring requirements and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight, **September 01, 2013.**

ISSUED DATE:

For the Commission

INTERIM EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the date of issuance and lasting through the completion of expansion of the 0.25 million gallons per day (MGD) facilities, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.05 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 104 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Minimum Self-Monitoring Requirements</u>	
	Daily Avg mg/(lbs/day)	7-day Avg mg/l	Daily Max mg/l	Report Daily Avg. & Max. Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	Five/week	Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (2.1)	10	20	One/week	Grab
Total Suspended Solids	5 (2.1)	10	20	One/week	Grab
Ammonia Nitrogen	2 (0.83)	5	10	One/week	Grab
Total Phosphorus	1 (0.42)	2	4	One/week	Grab
<i>E. coli</i> Colonies per 100 ml	126	N/A	N/A	One/week	Grab

2. 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), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
6. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the completion of expansion of the 0.25 million gallons per day (MGD) and lasting through the date of expiration, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.25 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 521 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Minimum Self-Monitoring Requirements</u>	
	Daily Avg mg/l(lbs/day)	7-day Avg mg/l	Daily Max mg/l	Report Daily Avg. & Max. Single Grab	Measurement Frequency Sample Type
Flow, MGD	Report	N/A	Report	N/A	Five/week Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (10)	10	20	30	One/week Grab
Total Suspended Solids	5 (10)	10	20	30	One/week Grab
Ammonia Nitrogen	2 (4.2)	5	10	15	One/week Grab
Total Phosphorus	1 (2.1)	2	4	6	One/week Grab
<i>E. coli</i> Colonies per 100 ml	126	N/A	N/A	394	One/week Grab

2. 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), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.

6. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

DEFINITIONS AND STANDARD PERMIT CONDITIONS

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC §§305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code (TWC) §§5.103 and 5.105, and the Texas Health and Safety Code (THSC) §§361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in TWC §26.001 and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

1. Flow Measurements

- a. Annual average flow - the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder, and limited to major domestic wastewater discharge facilities with one million gallons per day or greater permitted flow.
- b. Daily average flow - the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.
- c. Daily maximum flow - the highest total flow for any 24-hour period in a calendar month.
- d. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.
- e. 2-hour peak flow (domestic wastewater treatment plants) - the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.
- f. Maximum 2-hour peak flow (domestic wastewater treatment plants) - the highest 2-hour peak flow for any 24-hour period in a calendar month.

2. Concentration Measurements

- a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.
 - i. For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.
 - ii. For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.
- b. 7-day average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar week, Sunday through Saturday.
- c. Daily maximum concentration - the maximum concentration measured on a single day, by the sample type specified in the permit, within a period of one calendar month.
- d. Daily discharge - the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the "daily discharge" is calculated as the average measurement of the pollutant over the sampling day.

The "daily discharge" determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the "daily discharge" determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that day.

- e. Bacteria concentration (Fecal coliform, E. coli, or Enterococci) - the number of colonies of bacteria per 100 milliliters effluent. The daily average bacteria concentration is a geometric mean of the values for the effluent samples collected in a calendar month. The geometric mean shall be determined by calculating the nth root of the product of all measurements made in a calendar month, where n equals the number of measurements made; or, computed as the antilogarithm of the arithmetic mean of the logarithms of all measurements made in a calendar month. For any measurement of bacteria equaling zero, a substituted value of one shall be made for input into either computation method. If specified, the 7-day average for bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.
 - f. Daily average loading (lbs/day) - the arithmetic average of all daily discharge loading calculations during a period of one calendar month. These calculations must be made for each day of the month that a parameter is analyzed. The daily discharge, in terms of mass (lbs/day), is calculated as (Flow, MGD x Concentration, mg/l x 8.34).
 - f. Daily maximum loading (lbs/day) - the highest daily discharge, in terms of mass (lbs/day), within a period of one calendar month.
3. Sample Type
- a. Composite sample - For domestic wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC §319.9 (a). For industrial wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC §319.9 (b).
 - b. Grab sample - an individual sample collected in less than 15 minutes.
4. Treatment Facility (facility) - wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.
5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids that have not been classified as hazardous waste separated from wastewater by unit processes.
6. Bypass - the intentional diversion of a waste stream from any portion of a treatment facility.

MONITORING AND REPORTING REQUIREMENTS

1. Self-Reporting

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC §§319.4 - 319.12. Unless otherwise specified, a monthly effluent report shall be submitted each month, to the Enforcement Division (MC 224), by the 20th day of the following month for each discharge that is described by this permit whether or not a discharge is made for that month. Monitoring results must be reported on an approved self-report form that is signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act, the TWC Chapters 26, 27, and 28, and THSC Chapter 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

2. Test Procedures

- a. Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§319.11 - 319.12. Measurements, tests, and calculations shall be accurately accomplished in a representative manner.
- b. All laboratory tests submitted to demonstrate compliance with this permit must meet the requirements of 30 TAC Chapter 25, Environmental Testing Laboratory Accreditation and Certification.

3. Records of Results

- a. Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.
- b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR § 264.73(b)(9) shall be retained at the facility site, or shall be readily available for review by a TCEQ representative for a period of three years from the date of the record or sample, measurement, report, application or certification. This period shall be extended at the request of the Executive Director.
- c. Records of monitoring activities shall include the following:
 - i. date, time and place of sample or measurement;
 - ii. identity of individual who collected the sample or made the measurement.
 - iii. date and time of analysis;
 - iv. identity of the individual and laboratory who performed the analysis;
 - v. the technique or method of analysis; and
 - vi. the results of the analysis or measurement and quality assurance/quality control records.

The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, all results of such monitoring shall be included in the calculation and reporting of the values submitted on the approved self-report form. Increased frequency of sampling shall be indicated on the self-report form.

5. Calibration of Instruments

All automatic flow measuring or recording devices and all totalizing meters for measuring flows shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be retained at the facility site and/or shall be readily available for review by a TCEQ representative for a period of three years.

6. Compliance Schedule Reports

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date to the Regional Office No. 11 and the Enforcement Division (MC 224).

7. Noncompliance Notification

- a. In accordance with 30 TAC §305.125(9) any noncompliance that may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Report of such information shall be provided orally or by facsimile transmission (FAX) to the Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the Regional Office and the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
- b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:
 - i. Unauthorized discharges as defined in Permit Condition 2(g).
 - ii. Any unanticipated bypass that exceeds any effluent limitation in the permit.
 - iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.
- c. In addition to the above, any effluent violation that deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the Regional Office and the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.

- d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances shall be reported on the approved self-report form.
8. In accordance with the procedures described in 30 TAC §§35.301 - 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.

9. Changes in Discharges of Toxic Substances

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Regional Office, orally or by facsimile transmission within 24 hours, and both the Regional Office and the Enforcement Division (MC 224) in writing within five (5) working days, after becoming aware of or having reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - i. One hundred micrograms per liter (100 µg/L);
 - ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
 - iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
 - iv. The level established by the TCEQ.
- b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - i. Five hundred micrograms per liter (500 µg/L);
 - ii. One milligram per liter (1 mg/L) for antimony;
 - iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
 - iv. The level established by the TCEQ.

10. Signatories to Reports

All reports and other information requested by the Executive Director shall be signed by the person and in the manner required by 30 TAC §305.128 (relating to Signatories to Reports).

11. All publicly owned treatment works (POTWs) must provide adequate notice to the Executive Director of the following:
 - a. Any new introduction of pollutants into the POTW from an indirect discharger that would be subject to CWA §301 or §306 if it were directly discharging those pollutants;
 - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit; and
 - c. For the purpose of this paragraph, adequate notice shall include information on:
 - i. The quality and quantity of effluent introduced into the POTW; and
 - ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

PERMIT CONDITIONS

1. General

- a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.
- b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:
 - i. Violation of any terms or conditions of this permit;
 - ii. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
 - iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- c. The permittee shall furnish to the Executive Director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.

2. Compliance

- a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.
- b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.
- c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
- d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.
- e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.
- f. A permit may be amended, suspended and reissued, or revoked for cause in accordance with 30 TAC §§305.62 and 305.66 and TWC §7.302. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
- g. There shall be no unauthorized discharge of wastewater or any other waste. For the purpose of this permit, an unauthorized discharge is considered to be any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Other Requirements section of this permit.
- h. In accordance with 30 TAC §305.535(a), the permittee may allow any bypass to occur from a TPDES permitted facility that does not cause permitted effluent limitations to be exceeded or an unauthorized discharge to occur, but only if the bypass is also for essential maintenance to assure efficient operation.
- i. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under TWC §§7.051 - 7.075 (relating to Administrative Penalties), 7.101 - 7.111 (relating to Civil Penalties), and 7.141 - 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal CWA §§301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under the CWA §402, or any requirement imposed in a pretreatment program approved under the CWA §§402 (a)(3) or 402 (b)(8).

3. Inspections and Entry

- a. Inspection and entry shall be allowed as prescribed in the TWC Chapters 26, 27, and 28, and THSC Chapter 361.
- b. The members of the Commission and employees and agents of the Commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order of the Commission. Members, employees, or agents of the Commission and Commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, Commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, Commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the Executive Director may invoke the remedies authorized in TWC § 7.002. The statement above, that Commission entry shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection, is not grounds for denial or restriction of entry to any part of the facility, but merely describes the Commission's duty to observe appropriate rules and regulations during an inspection.

4. Permit Amendment and/or Renewal

- a. The permittee shall give notice to the Executive Director as soon as possible of any planned physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements. Notice shall also be required under this paragraph when:
 - i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in accordance with 30 TAC §305.534 (relating to New Sources and New Dischargers);
 - ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements in Monitoring and Reporting Requirements No. 9; or
 - iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- b. Prior to any facility modifications, additions, or expansions that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.
- c. The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate.
- d. Prior to accepting or generating wastes that are not described in the permit application or that would result in a significant change in the quantity or quality of the existing discharge, the permittee must report the proposed changes to the Commission. The permittee must apply for a permit amendment reflecting any necessary changes in permit conditions, including effluent limitations for pollutants not identified and limited by this permit.
- e. In accordance with the TWC §26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.
- f. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under CWA §307(a) for a toxic pollutant that is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition. The permittee

shall comply with effluent standards or prohibitions established under CWA §307(a) for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit Transfer

- a. Prior to any transfer of this permit, Commission approval must be obtained. The Commission shall be notified in writing of any change in control or ownership of facilities authorized by this permit. Such notification should be sent to the Applications Review and Processing Team (MC 148) of the Water Quality Division.
- b. A permit may be transferred only according to the provisions of 30 TAC §305.64 (relating to Transfer of Permits) and 30 TAC §50.133 (relating to Executive Director Action on Application or WQMP update).

6. Relationship to Hazardous Waste Activities

This permit does not authorize any activity of hazardous waste storage, processing, or disposal, which requires a permit or other authorization pursuant to the Texas Health and Safety Code.

7. Relationship to Water Rights

Disposal of treated effluent by any means other than discharge directly to water in the state must be specifically authorized in this permit and may require a permit pursuant to TWC Chapter 11.

8. Property Rights

A permit does not convey any property rights of any sort, or any exclusive privilege.

9. Permit Enforceability

The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. Relationship to Permit Application

The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

11. Notice of Bankruptcy.

- a. Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:
 - i. the permittee;
 - ii. an entity (as that term is defined in 11 USC, §101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or
 - iii. an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.
- b. This notification must indicate:
 - i. the name of the permittee and the permit number(s);
 - ii. the bankruptcy court in which the petition for bankruptcy was filed; and
 - iii. the date of filing of the petition.

OPERATIONAL REQUIREMENTS

1. The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.
2. Upon request by the Executive Director, the permittee shall take appropriate samples and provide proper analysis in order to demonstrate compliance with Commission rules. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all applicable provisions of 30 TAC Chapter 312 concerning sewage sludge use and disposal and 30 TAC §§319.21 - 319.29 concerning the discharge of certain hazardous metals.

3. Domestic wastewater treatment facilities shall comply with the following provisions:
 - a. The permittee shall notify the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, in writing, of any facility expansion at least 90 days prior to conducting such activity.
 - b. The permittee shall submit a closure plan for review and approval to the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. Closure is the act of permanently taking a waste management unit or treatment facility out of service and includes the permanent removal from service of any pit, tank, pond, lagoon, surface impoundment and/or other treatment unit regulated by this permit.
4. The permittee is responsible for installing prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.
5. Unless otherwise specified, the permittee shall provide a readily accessible sampling point and, where applicable, an effluent flow measuring device or other acceptable means by which effluent flow may be determined.
6. The permittee shall remit an annual water quality fee to the Commission as required by 30 TAC Chapter 21. Failure to pay the fee may result in revocation of this permit under TWC §7.302(b)(6).
7. Documentation

For all written notifications to the Commission required of the permittee by this permit, the permittee shall keep and make available a copy of each such notification under the same conditions as self-monitoring data are required to be kept and made available. Except for information required for TPDES permit applications, effluent data, including effluent data in permits, draft permits and permit applications, and other information specified as not confidential in 30 TAC §1.5(d), any information submitted pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted in the manner prescribed in the application form or by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, information may be made available to the public without further notice. If the Commission or Executive Director agrees with the designation of confidentiality, the TCEQ will not provide the information for public inspection unless required by the Texas Attorney General or a court pursuant to an open records request. If the Executive Director does not agree with the designation of confidentiality, the person submitting the information will be notified.

8. Facilities that generate domestic wastewater shall comply with the following provisions; domestic wastewater treatment facilities at permitted industrial sites are excluded.
 - a. Whenever flow measurements for any domestic sewage treatment facility reach 75% of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the domestic wastewater treatment and/or collection facilities. Whenever the flow reaches 90% of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a domestic wastewater treatment facility that reaches 75% of the permitted daily average or annual average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee shall submit an engineering report supporting this claim to the Executive Director of the Commission.

If in the judgment of the Executive Director the population to be served will not cause permit noncompliance, then the requirement of this section may be waived. To be effective, any waiver must be in writing and signed by the Director of the Enforcement Division (MC 149) of the Commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

- b. The plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Commission and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.

- c. Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment, and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.
9. Domestic wastewater treatment plants shall be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30.
 10. For Publicly Owned Treatment Works (POTWs), the 30-day average (or monthly average) percent removal for BOD and TSS shall not be less than 85%, unless otherwise authorized by this permit.
 11. Facilities that generate industrial solid waste as defined in 30 TAC §335.1 shall comply with these provisions:
 - a. Any solid waste, as defined in 30 TAC §335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335, relating to Industrial Solid Waste Management.
 - b. Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.
 - c. The permittee shall provide written notification, pursuant to the requirements of 30 TAC §335.8(b)(1), to the Environmental Cleanup Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.
 - d. Construction of any industrial solid waste management unit requires the prior written notification of the proposed activity to the Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division. No person shall dispose of industrial solid waste, including sludge or other solids from wastewater treatment processes, prior to fulfilling the deed recordation requirements of 30 TAC §335.5.
 - e. The term "industrial solid waste management unit" means a landfill, surface impoundment, waste-pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or any other structure vessel, appurtenance, or other improvement on land used to manage industrial solid waste.
 - f. The permittee shall keep management records for all sludge (or other waste) removed from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TAC Chapter 335 and must include the following, as it pertains to wastewater treatment and discharge:
 - i. Volume of waste and date(s) generated from treatment process;
 - ii. Volume of waste disposed of on-site or shipped off-site;
 - iii. Date(s) of disposal;
 - iv. Identity of hauler or transporter;
 - v. Location of disposal site; and
 - vi. Method of final disposal.
- The above records shall be maintained on a monthly basis. The records shall be retained at the facility site, or shall be readily available for review by authorized representatives of the TCEQ for at least five years.
12. For industrial facilities to which the requirements of 30 TAC Chapter 335 do not apply, sludge and solid wastes, including tank cleaning and contaminated solids for disposal, shall be disposed of in accordance with THSC Chapter 361.

SLUDGE PROVISIONS

The permittee is authorized to dispose of sludge only at a Texas Commission on Environmental Quality (TCEQ) authorized land application site or co-disposal landfill. **The disposal of sludge by land application on property owned, leased, or under the direct control of the permittee is a violation of the permit unless the site is authorized with the TCEQ. This provision does not authorize Distribution and Marketing of sludge. This provision does not authorize land application of Class A Sludge. This provision does not authorize the permittee to land apply sludge on property owned, leased or under the direct control of the permittee.**

SECTION I. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE LAND APPLICATION

A. General Requirements

1. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC Chapter 312 and all other applicable state and federal regulations in a manner that protects public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present in the sludge.
2. In all cases, if the person (permit holder) who prepares the sewage sludge supplies the sewage sludge to another person for land application use or to the owner or leaseholder of the land, the permit holder shall provide necessary information to the parties who receive the sludge to assure compliance with these regulations.
3. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

B. Testing Requirements

1. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I [Toxicity Characteristic Leaching Procedure (TCLP)] or other method, that receives the prior approval of the TCEQ for the contaminants listed in Table 1 of 40 CFR §261.24. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal. Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division and the Regional Director (MC Region -11) within 7 days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 11) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

2. Sewage sludge shall not be applied to the land if the concentration of the pollutants exceeds the pollutant concentration criteria in Table 1. The frequency of testing for pollutants in Table 1 is found in Section I.C.

TABLE 1

<u>Pollutant</u>	<u>Ceiling Concentration</u> (Milligrams per kilogram)*
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
PCBs	49
Selenium	100
Zinc	7500

* Dry weight basis

3. Pathogen Control

All sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following methods to ensure that the sludge meets either the Class A or Class B pathogen requirements.

- a. Six alternatives are available to demonstrate compliance with Class A sewage sludge. The first 4 options require either the density of fecal coliform in the sewage sludge be less than 1000 Most Probable Number (MPN) per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the sewage sludge be less than three MPN per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. Below are the additional requirements necessary to meet the definition of a Class A sludge.

Alternative 1 - The temperature of the sewage sludge that is used or disposed shall be maintained at or above a specific value for a period of time. See 30 TAC §312.82(a)(2)(A) for specific information.

Alternative 2 - The pH of the sewage sludge that is used or disposed shall be raised to above 12 std. units and shall remain above 12 std. units for 72 hours.

The temperature of the sewage sludge shall be above 52° Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12 std. units.

At the end of the 72-hour period during which the pH of the sewage sludge is above 12 std. units, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

Alternative 3 - The sewage sludge shall be analyzed for enteric viruses prior to pathogen treatment. The limit for enteric viruses is less than one plaque-forming unit per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC §312.82(a)(2)(C)(i-iii) for specific information. The sewage sludge shall be analyzed for viable helminth ova prior to pathogen treatment. The limit for viable helminth ova is less than one per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC §312.82(a)(2)(C)(iv-vi) for specific information.

Alternative 4 - The density of enteric viruses in the sewage sludge shall be less than one plaque-forming unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed.

Alternative 5 (PFRP) - Sewage sludge that is used or disposed of shall be treated in one of the processes to Further Reduce Pathogens (PFRP) described in 40 CFR Part 503, Appendix B. PFRP include composting, heat drying, heat treatment, and thermophilic aerobic digestion.

Alternative 6 (PFRP Equivalent) - Sewage sludge that is used or disposed of shall be treated in a process that has been approved by the U. S. Environmental Protection Agency (EPA) as being equivalent to those in Alternative 5.

- b. Three alternatives are available to demonstrate compliance with Class B criteria for sewage sludge.

Alternative 1 -

- i. A minimum of seven random samples of the sewage sludge shall be collected within 48 hours of the time the sewage sludge is used or disposed of during each monitoring episode for the sewage sludge.
- ii. The geometric mean of the density of fecal coliform in the samples collected shall be less than either 2,000,000 MPN per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

Alternative 2 - Sewage sludge that is used or disposed of shall be treated in one of the Processes to Significantly Reduce Pathogens (PSRP) described in 40 CFR Part 503, Appendix B, so long as all of the following requirements are met by the generator of the sewage sludge.

- i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;
- ii. An independent Texas Licensed Professional Engineer must make a certification to the generator of a sewage sludge that the wastewater treatment facility generating the sewage sludge is designed to achieve one of the PSRP at the permitted design loading of the facility. The certification need only be repeated if the design loading of the facility is increased. The certification shall include a statement indicating the design meets all the applicable standards specified in Appendix B of 40 CFR Part 503;
- iii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established EPA final guidance;
- iv. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review; and
- v. If the sewage sludge is generated from a mixture of sources, resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the PSRP, and shall meet the certification, operation, and record keeping requirements of this paragraph.

Alternative 3 - Sewage sludge shall be treated in an equivalent process that has been approved by the EPA so long as all of the following requirements are met by the generator of the sewage sludge.

- i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;
- ii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established EPA final guidance;
- iii. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review;
- iv. The executive director will accept from the EPA a finding of equivalency to the defined PSRP; and
- v. If the sewage sludge is generated from a mixture of sources resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the processes to significantly reduce pathogens, and shall meet the certification, operation, and record keeping requirements of this paragraph.

In addition, the following site restrictions must be met if Class B sludge is land applied:

- vi. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.
- vii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for 4 months or longer prior to incorporation into the soil.
- viii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than 4 months prior to incorporation into the soil.
- ix. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.
- x. Animals shall not be allowed to graze on the land for 30 days after application of sewage sludge.
- xi. Turf grown on land where sewage sludge is applied shall not be harvested for one year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn.
- xii. Public access to land with a high potential for public exposure shall be restricted for one year after application of sewage sludge.
- xiii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge.
- xiv. Land application of sludge shall be in accordance with the buffer zone requirements found in 30 TAC §312.44.

4. Vector Attraction Reduction Requirements

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following alternatives 1 through 10 for Vector Attraction Reduction.

- Alternative 1 - The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38%.
- Alternative 2 - If Alternative 1 cannot be met for an anaerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30° and 37° Celsius (C). Volatile solids must be reduced by less than 17% to demonstrate compliance.
- Alternative 3 - If Alternative 1 cannot be met for an aerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge with a percent solids of two percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20° C. Volatile solids must be reduced by less than 15% to demonstrate compliance.
- Alternative 4 - The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20° C.
- Alternative 5 - Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40° C and the average temperature of the sewage sludge shall be higher than 45° C.
- Alternative 6 - The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali shall remain at 12 or higher for two hours and then remain at a pH of 11.5 or higher for an additional 22 hours at the time the sewage sludge is prepared for sale or given away in a bag or other container.
- Alternative 7 - The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials. Unstabilized solids are

defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

Alternative 8 - The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials at the time the sludge is used. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

Alternative 9 -

- i. Sewage sludge shall be injected below the surface of the land.
- ii. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.
- iii. When sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

Alternative 10-

- i. Sewage sludge applied to the land surface or placed on a surface disposal site shall be incorporated into the soil within six hours after application to or placement on the land.
- ii. When sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

C. Monitoring Requirements

- 1. Toxicity Characteristic Leaching Procedure (TCLP) Test once during the term of this permit
- 2. PCBs once during the term of this permit
- 3. All metal constituents and Fecal coliform or *Salmonella sp.* bacteria shall be monitored at the appropriate frequency shown below, pursuant to 30 TAC §312.46(a)(1):

<u>Amount of sewage sludge (*) metric tons per 365-day period</u>	<u>Monitoring Frequency</u>
0 to less than 290	Once/Year
290 to less than 1,500	Once/Quarter
1,500 to less than 15,000	Once/Two Months
15,000 or greater	Once/Month

(*) *The amount of bulk sewage sludge applied to the land (dry weight basis).*

- 4. Representative samples of sewage sludge shall be collected and analyzed in accordance with the methods referenced in 30 TAC §312.7.

SECTION II. REQUIREMENTS SPECIFIC TO BULK SEWAGE SLUDGE FOR APPLICATION TO THE LAND MEETING CLASS A or B PATHOGEN REDUCTION AND THE CUMULATIVE LOADING RATES IN TABLE 2, OR CLASS B PATHOGEN REDUCTION AND THE POLLUTANT CONCENTRATIONS IN TABLE 3

For those permittees meeting Class A or B pathogen reduction requirements and that meet the cumulative loading rates in Table 2 below, or the Class B pathogen reduction requirements and contain concentrations of pollutants below listed in Table 3, the following conditions apply:

A. Pollutant Limits

Table 2

<u>Pollutant</u>	<u>Cumulative Pollutant Loading Rate (pounds per acre)*</u>
Arsenic	36
Cadmium	35
Chromium	2677
Copper	1339
Lead	268
Mercury	15
Molybdenum	Report Only
Nickel	375
Selenium	89
Zinc	2500

Table 3

<u>Pollutant</u>	<u>Monthly Average Concentration (milligrams per kilogram)*</u>
Arsenic	41
Cadmium	39
Chromium	1200
Copper	1500
Lead	300
Mercury	17
Molybdenum	Report Only
Nickel	420
Selenium	36
Zinc	2800

* Dry weight basis

B. Pathogen Control

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, a reclamation site, shall be treated by either Class A or Class B pathogen reduction requirements as defined above in Section I.B.3.

C. Management Practices

1. Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other waters in the State.
2. Bulk sewage sludge not meeting Class A requirements shall be land applied in a manner that complies with the Management Requirements in accordance with 30 TAC §312.44.
3. Bulk sewage sludge shall be applied at or below the agronomic rate of the cover crop.

4. An information sheet shall be provided to the person who receives bulk sewage sludge sold or given away. The information sheet shall contain the following information:
 - a. The name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land.
 - b. A statement that application of the sewage sludge to the land is prohibited except in accordance with the instruction on the label or information sheet.
 - c. The annual whole sludge application rate for the sewage sludge application rate for the sewage sludge that does not cause any of the cumulative pollutant loading rates in Table 2 above to be exceeded, unless the pollutant concentrations in Table 3 found in Section II above are met.

D. Notification Requirements

1. If bulk sewage sludge is applied to land in a State other than Texas, written notice shall be provided prior to the initial land application to the permitting authority for the State in which the bulk sewage sludge is proposed to be applied. The notice shall include:
 - a. The location, by street address, and specific latitude and longitude, of each land application site.
 - b. The approximate time period bulk sewage sludge will be applied to the site.
 - c. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk sewage sludge.
2. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

E. Record keeping Requirements

The sludge documents will be retained at the facility site and/or shall be readily available for review by a TCEQ representative. The person who prepares bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative for a period of five years. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC §312.47 for persons who land apply.

1. The concentration (mg/kg) in the sludge of each pollutant listed in Table 3 above and the applicable pollutant concentration criteria (mg/kg), or the applicable cumulative pollutant loading rate and the applicable cumulative pollutant loading rate limit (lbs/ac) listed in Table 2 above.
2. A description of how the pathogen reduction requirements are met (including site restrictions for Class B sludges, if applicable).
3. A description of how the vector attraction reduction requirements are met.
4. A description of how the management practices listed above in Section II.C are being met.
5. The following certification statement:

"I certify, under penalty of law, that the applicable pathogen requirements in 30 TAC §312.82(a) or (b) and the vector attraction reduction requirements in 30 TAC §312.83(b) have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices have been met. I am aware that there are significant penalties for false certification including fine and imprisonment."
6. The recommended agronomic loading rate from the references listed in Section II.C.3. above, as well as the actual agronomic loading rate shall be retained.

The person who applies bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative indefinitely. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC §312.47 for persons who land apply.

1. A certification statement that all applicable requirements (specifically listed) have been met, and that the permittee understands that there are significant penalties for false certification including fine and imprisonment. See 30 TAC §312.47(a)(4)(A)(ii) or 30 TAC §312.47(a)(5)(A)(ii), as applicable, and to the permittee's specific sludge treatment activities.
2. The location, by street address, and specific latitude and longitude, of each site on which sludge is applied.
3. The number of acres in each site on which bulk sludge is applied.
4. The date and time sludge is applied to each site.
5. The cumulative amount of each pollutant in pounds/acre listed in Table 2 applied to each site.
6. The total amount of sludge applied to each site in dry tons.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

F. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC Region -11 and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division, by September 1 of each year the following information:

1. Results of tests performed for pollutants found in either Table 2 or 3 as appropriate for the permittee's land application practices.
2. The frequency of monitoring listed in Section I.C. that applies to the permittee.
3. Toxicity Characteristic Leaching Procedure (TCLP) results.
4. Identity of hauler(s) and TCEQ transporter number.
5. PCB concentration in sludge in mg/kg.
6. Date(s) of disposal.
7. Owner of disposal site(s).
8. Texas Commission on Environmental Quality registration number, if applicable.
9. Amount of sludge disposal dry weight (lbs/acre) at each disposal site.
10. The concentration (mg/kg) in the sludge of each pollutant listed in Table 1 (defined as a monthly average) as well as the applicable pollutant concentration criteria (mg/kg) listed in Table 3 above, or the applicable pollutant loading rate limit (lbs/acre) listed in Table 2 above if it exceeds 90% of the limit.
11. Level of pathogen reduction achieved (Class A or Class B).
12. Alternative used as listed in Section I.B.3.(a. or b.). Alternatives describe how the pathogen reduction requirements are met. If Class B sludge, include information on how site restrictions were met.
13. Vector attraction reduction alternative used as listed in Section I.B.4.
14. Annual sludge production in dry tons/year.
15. Amount of sludge land applied in dry tons/year.
16. The certification statement listed in either 30 TAC §312.47(a)(4)(A)(ii) or 30 TAC §312.47(a)(5)(A)(ii) as applicable to the permittee's sludge treatment activities, shall be attached to the annual reporting form.
17. When the amount of any pollutant applied to the land exceeds 90% of the cumulative pollutant loading rate for that pollutant, as described in Table 2, the permittee shall report the following information as an attachment to the annual reporting form.
 - a. The location, by street address, and specific latitude and longitude.

- b. The number of acres in each site on which bulk sewage sludge is applied.
- c. The date and time bulk sewage sludge is applied to each site.
- d. The cumulative amount of each pollutant (i.e., pounds/acre) listed in Table 2 in the bulk sewage sludge applied to each site.
- e. The amount of sewage sludge (i.e., dry tons) applied to each site.

The above records shall be maintained on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

SECTION III. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE DISPOSED IN A MUNICIPAL SOLID WASTE LANDFILL

- A. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC Chapter 330 and all other applicable state and federal regulations to protect public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present. The permittee shall ensure that the sewage sludge meets the requirements in 30 TAC Chapter 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.
- B. If the permittee generates sewage sludge and supplies that sewage sludge to the owner or operator of a Municipal Solid Waste Landfill (MSWLF) for disposal, the permittee shall provide to the owner or operator of the MSWLF appropriate information needed to be in compliance with the provisions of this permit.
- C. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.
- D. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I (Toxicity Characteristic Leaching Procedure) or other method that receives the prior approval of the TCEQ for contaminants listed in Table 1 of 40 CFR §261.24. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal.

Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division and the Regional Director (MC Region 11) of the appropriate TCEQ field office within 7 days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 11) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

- E. Sewage sludge shall be tested as needed, in accordance with the requirements of 30 TAC Chapter 330.
- F. Record keeping Requirements

The permittee shall develop the following information and shall retain the information for five years.

1. The description (including procedures followed and the results) of all liquid Paint Filter Tests performed.
2. The description (including procedures followed and results) of all TCLP tests performed.
3. The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

- G. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC Region 11) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year the following information:

1. Toxicity Characteristic Leaching Procedure (TCLP) results.
2. Annual sludge production in dry tons/year.
3. Amount of sludge disposed in a municipal solid waste landfill in dry tons/year.
4. Amount of sludge transported interstate in dry tons/year.
5. A certification that the sewage sludge meets the requirements of 30 TAC Chapter 330 concerning the quality of

the sludge disposed in a municipal solid waste landfill.

6. Identity of hauler(s) and transporter registration number.
7. Owner of disposal site(s).
8. Location of disposal site(s).
9. Date(s) of disposal.
10. The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

OTHER REQUIREMENTS

1. The permittee shall employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration according to the requirements of 30 TAC Chapter 30, Occupational Licenses and Registrations and in particular 30 TAC Chapter 30, Subchapter J, Wastewater Operators and Operations Companies.

This Category C facility must be operated by a chief operator or an operator holding a Category C license or higher. The facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher. The licensed chief operator or operator holding the required level of license or higher must be available by telephone or pager seven days per week. Where shift operation of the wastewater treatment facility is necessary, each shift that does not have the on-site supervision of the licensed chief operator must be supervised by an operator in charge who is licensed not less than one level below the category for the facility.

2. The facility is not located in the Coastal Management Program boundary.
3. The permittee is hereby placed on notice that this permit may be reviewed by the TCEQ after the completion of any new intensive water quality survey on Segment No. 1428 of the Colorado River Basin and any subsequent updating of the water quality model for Segment No. 1428, in order to determine if the limitations and conditions contained herein are consistent with any such revised model. The permit may be amended, pursuant to 30 TAC §305.62, as a result of such review. The permittee is also hereby placed on notice that effluent limits may be made more stringent at renewal based on, for example, any change to modeling protocol approved in the TCEQ Continuing Planning Process.
4. The permittee shall comply with the requirements of 30 TAC §309.13 (a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC §309.13(e).
5. Reporting requirements according to 30 TAC Sections 319.1-319.11 and any additional effluent reporting requirements contained in this permit are suspended from the effective date of the permit until plant startup or discharge, whichever occurs first, from the facility described by this permit. The permittee shall provide written notice to the TCEQ Regional Office (MC Region 11) and the Applications Review and Processing Team (MC 148) of the Water Quality Division at least forty-five (45) days prior to plant startup or anticipated discharge, whichever occurs first and prior to completion of each additional phase.
6. Prior to construction of the treatment facilities, the permittee shall submit to the TCEQ Wastewater Permitting Section (MC 148) a summary submittal letter in accordance with the requirements in 30 TAC Section 217.6(c). If requested by the Wastewater Permitting Section, the permittee shall submit plans, specifications and a final engineering design report which comply with 30 TAC Chapter 217, Design Criteria for Wastewater Treatment Systems. The permittee shall clearly show how the treatment system will meet the final permitted effluent limitations required on Page 2 and 2a of the permit.
7. The permittee shall provide facilities for the protection of its wastewater treatment facilities from a 100-year flood.
8. The permittee is hereby placed on notice that the Executive Director of the TCEQ will be initiating rulemaking and/or changes to procedural documents that may result in bacteria effluent limits and monitoring requirements for this facility.

Executive Director's
Attachment C

Compliance History Report

Customer/Respondent/Owner-Operator:	CN600610828 Aqua Water Supply Corporation	Classification: AVERAGE	Rating: 0.59
Regulated Entity:	RN105278758 DOUBLE EAGLE RANCH WWTP	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):			
Location:	APPROX 1.25 MI N OF INTXN OLD 71 & HWY 71		
TCEQ Region:	REGION 11 - AUSTIN		
Date Compliance History Prepared:	August 10, 2009		
Agency Decision Requiring Compliance History:	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.		
Compliance Period:	July 01, 2004 to June 30, 2009		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
Name:	Michael A. Redda	Phone:	239-4631

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator?

OWNOPR	Aqua Water Supply Corporation
--------	-------------------------------
4. If Yes, who was/were the prior owner(s)/operator(s) ?

OWNOPR	South Central Water Company
--------	-----------------------------
5. When did the change(s) in owner or operator occur?

11/18/2008	OWNOPR	South Central Water Company
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6. Rating Date: 9/1/2008 Repeat Violator: NO

Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.
N/A
 - B. Any criminal convictions of the state of Texas and the federal government.
N/A
 - C. Chronic excessive emissions events.
N/A
 - D. The approval dates of investigations. (CCEDS Inv. Track. No.)
N/A
 - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)
N/A
 - F. Environmental audits.
N/A
 - G. Type of environmental management systems (EMSs).
 - H. Voluntary on-site compliance assessment dates.
N/A
 - I. Participation in a voluntary pollution reduction program.
N/A
 - J. Early compliance.
N/A
- Sites Outside of Texas
N/A

Executive Director's
Attachment D

TCEQ INTERAGENCY TRANSMITTAL MEMO

2009 MAY -8 PM 2:12

DATE: May 8, 2009

CHIEF CLERKS OFFICE

TO: LaDonna Castañuela
CHIEF CLERK
BUILDING F, MC - 105

FROM: Celia Castro
ENVIRONMENTAL LAW DIVISION
BUILDING A, MC-173

Attached: Executive Director's Response to Comments

Application Information:

Air Permit No.: _____ Name: _____ If known, Docket or CCO Tracking #: _____
 Waste Permit No.: _____ Name: _____ If known, Docket or CCO Tracking #: _____
 Water Permit No. 0014833001 Name: Aqua Water Supply Corporation (Double Eagle Ranch)
If known, Docket or CCO Tracking #: _____

Action Required (pick one):

Date stamp and return copy to above-referenced ELD staff attorney and do one of the following:

FOR WASTE & WATER:

Send Response to Comments Letter which solicits hearing requests and requests for reconsideration to those on the mailing list in your office.
For Waste and Water this would occur in all circumstances when comments have been received

FOR AIR:

- Send Response to Comments Letter which solicits hearing requests and requests for reconsideration to those on the attached list AND the mailing list in your files
For Air applications this would occur only when there are pending hearing requests
- Place in File - no further action required by OCC
*For Air applications this would occur when the matter is uncontested but comments were received, ED will send a copy with MTO letter
For Waste and Water this would not occur*
- Hold until a Commission Agenda date is requested and then enclose with the Agenda Setting Letter
For Air applications this would occur when the executive director's position is that the matter meets TCAA §382.056(g) & (o)

Other Instructions: _____

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

May 8, 2009

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

Re: Aqua Water Supply Corporation
Permit No. WQ0014833001
Executive Director's Response to Public Comments.

Dear Ms. Castañuela:

I am enclosing for filing with the Texas Commission on Environmental Quality the "Executive Director's Response to Public Comments" regarding Aqua Water Supply Corporation (Double Eagle Ranch), Permit No. WQ0014833001.

If you have any questions, please call me at 239-5692.

Sincerely,

A handwritten signature in cursive script that reads "Celia Castro".

Celia Castro
Staff Attorney
Environmental Law Division

Enclosure(s):
Executive Director's Response to Public Comments

PROPOSED TPDES PERMIT NO. WQ0014833001

2009 MAY -8 PM 2:12

CHIEF CLERKS OFFICE

APPLICATION BY
AQUA WATER SUPPLY
CORPORATION

§
§
§

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

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 Aqua Water Supply Corporation's (Applicant) application for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014833001, and the ED's preliminary decision. As required by Title 30 of the Texas Administrative Code (TAC) § 55.156, 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 the following persons:

Shirley Adams; Darren S. Carroll; Rick Clemens; the Honorable Robert L. "Robby" Cook (U.S. House of Representatives); Madison Jechow; Jeff Long; Chad Martin; Darlene Pendell representing the Double Eagle Research Committee (DERC); William and Darlene Pendell; the River Crossing Improvement Association (RCIA) represented by Catherine Roberts, Bryce A. Johnson, Marcy Bernasconi, Bill Pendell, and Dinah Van Peski; the Lower Colorado River Authority (LCRA) represented by Leigh Sebastian; Deena Spellman; Regis Stevenson and Julie Salem; Bennie and Elizabeth Wallace; and Lori Zimmerman.

This Response addresses all such timely public comments received, whether or not withdrawn.

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

TCEQ received an application on July 9, 2007 from South Central Water Company for a new permit, proposed TPDES Permit No. WQ0014833001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day (gpd). On November 19, 2008, TCEQ received an amended application from Aqua Water Supply Corporation, listing Aqua Water Supply Corporation as the sole Applicant. The Applicant also amended the application by reducing the daily average flow from three phases (50,000, 150,000, and 750,000 gpd) to two phases (50,000 gpd in the interim phase and 250,000 gpd in the final phase). The proposed wastewater treatment facility would serve the Double Eagle Ranch Service Area and would be located approximately 1.25 miles north of the intersection of Old 71 and Highway 71 in Bastrop County, Texas.

The Double Eagle Ranch Wastewater Treatment Facility would be an activated sludge process plant operated in the complete mix single stage nitrification mode. Treatment units would include bar screens, aeration basins, final clarifiers, sludge digesters, and a chlorine contact chamber. The Applicant has not constructed the facility. The draft permit would authorize the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

The effluent limitations in both phases of the draft permit, based on a 30-day average, are 5 mg/l Carbonaceous Biochemical Oxygen Demand (CBOD₅), 5 mg/l Total Suspended Solids (TSS), 2 mg/l Ammonia-Nitrogen (NH₃-N), 1 mg/l Total Phosphorus, 126 colonies *E. coli* per 100 ml, 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 effluent limitations in the draft permit will maintain and protect the existing instream uses.

The treated effluent would be discharged to Moss Branch; then to Dry Creek; then to the Colorado River Below Town Lake in Segment No. 1428 of the Colorado River Basin. The unclassified receiving water uses are high aquatic life uses for Moss Branch and Dry Creek. The designated uses for Segment No. 1428 are exceptional aquatic life uses, public water supply, and contact recreation. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Segment No. 1428, which has been identified as having exceptional aquatic life use. Existing uses will be maintained and protected.

Procedural Background

TCEQ received the original permit application from South Central Water Company on July 9, 2007, and declared it administratively complete on July 20, 2007. The Notice of Application and Intent to Obtain Water Quality Permit (NORI) was published on August 25, 2007 in *The Bastrop Advertiser*. The Notice of Application and Preliminary Decision (NAPD) was published October 11, 2007 in *The Bastrop Advertiser*. TCEQ held a public meeting on July 15, 2008, and the public comment period ended at the close of the meeting. Due to significant public interest, Aqua Water Supply Corporation filed an amended application on November 19, 2008, listing itself as the sole Applicant. On February 5, 2009, the Applicant published a combined NORI and NAPD in Spanish in *Ahora si!* and in English in *The Bastrop Advertiser*. The Applicant also published the combined notice on February 6, 2009 in the *Austin American-*

Statesman. The extended public comment period ended on March 9, 2009. This application is subject to the procedural requirements of House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Shirley Adams; Darren S. Carroll; Rick Clemens; Jeff Long; Chad Martin; the RCIA; Deena Spellman; Bennie and Elizabeth Wallace; and Lori Zimmerman stated that the treated wastewater discharge will affect water quality, damage the ecosystem, impair recreational uses, and cause health problems.

RESPONSE 1:

As part of the permit application process, the ED determines the uses of the receiving water and sets effluent limits that are protective of those uses. In this case, the unclassified receiving water uses are high aquatic life uses for Moss Branch and Dry Creek. The designated uses for Segment No. 1428 are exceptional aquatic life uses, public water supply, and contact recreation. The draft permit includes effluent limitations and monitoring requirements to ensure that the proposed limits will not violate the Texas Surface Water Quality Standards (TSWQS). The TSWQS protects surface water, groundwater, aquatic and terrestrial life, and human health. The draft permit 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 accordance with 30 TAC § 307.5 and the TCEQ implementation procedures (January 2003) for the TSWQS, TCEQ staff performed an antidegradation review of the receiving waters. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses

will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Segment No. 1428, which has been identified as having exceptional aquatic life use. Existing uses will be maintained and protected.

No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses should be maintained and protected as long as the Applicant operates and maintains the facility according to TCEQ rules and the requirements of the draft permit. If TCEQ receives new information, staff can re-examine and modify the preliminary determination.

COMMENT 2:

Shirley Adams and Deena Spellman expressed concern that the treated wastewater discharge will negatively affect water wells.

RESPONSE 2:

According to 30 TAC § 309.13(c), a wastewater treatment plant unit may not be located closer than 500 feet from a public water well or 250 feet from a private water well. These separation distances apply to any facility used for the storage, processing, or disposal of domestic wastewater. During the permitting process, the ED conducted a detailed review and found no public or private water wells within the buffer zone radius specified in the rule.

COMMENT 3:

The Hon. Robert L. "Robby" Cook; Shirley Adams; Darren S. Carroll; Rick Clemens; Jeff Long; Chad Martin; the RCIA; Deena Spellman; Bennie and Elizabeth Wallace; and Lori Zimmerman are concerned about noise, vibration, and aesthetic impacts that may be caused by the proposed wastewater treatment plant, thereby limiting the use and enjoyment of their property and overall quality of life.

RESPONSE 3:

TCEQ does not address these issues in the wastewater permitting process. The water quality permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The TCEQ cannot consider quality of life concerns (such as noise and vibrations) when reviewing wastewater applications and preparing draft permits.

However, the issuance of a permit does not grant to the Applicant the right to use private or public property for conveyance of wastewater along the discharge route. This includes property belonging to any individual, partnership, corporation or other entity. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is the Applicant's responsibility to acquire the necessary property rights to use the discharge route.

Also, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 4:

Bennie and Elizabeth Wallace expressed concern about potential odor from the proposed treatment facility.

RESPONSE 4:

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odors (30 TAC § 309.13(e)). These rules

provide three options to satisfy the nuisance odor abatement and control requirement. The Applicant can meet this requirement by owning the buffer zone area, by obtaining a restrictive easement from the adjacent property owners for any part of the buffer zone not owned by the Applicant, or by providing odor control plan.

In this case, the Applicant meets the buffer zone requirements by owning the buffer zone in accordance with the requirements of 30 TAC § 309.13(a)-(d). In addition to owning the required buffer zone area, the Applicant is required to comply with the requirements of 30 TAC § 309.13(e). If the TCEQ issues the permit and you have complaints about the facility, please contact the TCEQ at 1-888-777-3186 or the TCEQ Region 11 office in Austin at (512) 339-2929. You may also file citizen complaints on-line at <http://www.tceq.state.tx.us/compliance/complaints/index.html>. Noncompliance with the permit may result in an enforcement action against the Applicant.

In addition, the permit does not limit the ability to seek legal remedies against an applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that interfere with the normal use and enjoyment of property.

COMMENT 5:

Jeff Long and Shirley Adams expressed their concern on the likely consequences of inadequate funding, including improper operation and maintenance. Jeff Long also requested that the Applicant post a bond to mitigate any hazards that the proposed facility may cause. Deena Spellman asked if the proposed facility contains any environmental easement.

RESPONSE 5:

According to TCEQ rules, the Applicant is not required to post a bond to ensure that adequate funds are available to construct and operate the wastewater treatment facility. TCEQ also does not require an applicant to provide any environmental easement except the buffer requirements covered under RESPONSE 2 and RESPONSE 4.

COMMENT 6:

Jeff Long expressed concern as to the method of operation for the wastewater treatment facility.

RESPONSE 6:

The Applicant is responsible for operating the facility; however, the Applicant may contract with an individual operator, company, or other entity to operate the facility. Anyone who operates a domestic wastewater facility is required to hold a current wastewater operator license issued by the TCEQ.

TCEQ rules require a licensed wastewater operator to hold a specific level of license based on the type of treatment and permitted daily average flow. The rules state that the chief operator or operator with the required level of license or higher must be present at the facility five days per week and available by phone or pager seven days per week. The ultimate responsibility for the maintenance and operation of the plant lies with the permittee. It is the duty of the permittee to operate the plant in accordance with the TCEQ rules and the draft permit.

General complaints about the facility or suspected incidents of noncompliance with the permit or TCEQ rules may be reported to the TCEQ Region 11 office in Austin at (512) 339-2929 or by calling the Environmental Violations Hotline at 1-888-777-3186. Citizens can also

file a complaint online at www.tceq.state.tx.us/compliance/complaints/index.html or via email at cmplaint@tceq.state.tx.us.

COMMENT 7:

Jeff Long expressed his concern regarding the proper operation and maintenance of the proposed facility. He was also concerned about how the Applicant would handle an accidental discharge. Darren Carroll and Lori Zimmerman also expressed their concern on the treatment efficiency and commented whether the Applicant should use a better technology, i.e. Membrane Bioreactor (MBR).

RESPONSE 7:

TCEQ does not require an applicant to use a particular type of treatment technology. However, prior to construction of the treatment facility, the Applicant must submit plans and specifications to the TCEQ Wastewater Permitting Section in accordance with the requirements in 30 TAC § 217.6. TCEQ does not require that the Applicant submit plans and specifications prior to issuance of the permit (30 TAC § 217.6(a)). The Applicant must clearly show how the treatment system will meet the permitted effluent limitations. The proposed Wastewater Treatment Facility would be an activated sludge process plant operated in the complete mix single stage nitrification mode. Treatment units would include bar screens, aeration basins, final clarifiers, sludge digesters and chlorine contact chamber. This technology has been used extensively in the State and is believed to be able to meet the required effluent limitations if the plant is properly designed, built, and operated.

Additionally, the Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the Applicant must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during

electrical power failures by means of alternate power sources, standby generators, or retention of inadequately treated wastewater.

The Applicant is required to report any unauthorized discharge to the TCEQ within 24 hours. If the Applicant fails to report the unauthorized discharge or bypass to the TCEQ within the prescribed time, it will be subject to enforcement action. The TCEQ conducts periodic inspections of wastewater treatment facilities and investigations based on complaints received from the public. To report complaints about the facility, please contact the Austin Regional Office at (512) 339-2929, or call the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. You may also file citizen complaints on-line at www.tceq.state.tx.us/compliance/complaints/index.html. The TCEQ investigates all complaints received. If the facility does not comply with the terms and conditions of the draft permit, the Applicant will be subject to investigation and possible enforcement action.

COMMENT 8:

Bennie and Elizabeth Wallace commented that the Applicant should consider a different outfall location. The DERC also requested that several entities (TCEQ, LCRA, the City of Bastrop, Bastrop County, and the developer) share the cost to direct the effluent to the McKinney Roughs wastewater treatment plant owned by the LCRA.

RESPONSE 8:

TCEQ rules do not allow the ED to determine or mandate a different facility or discharge location, alternative means of conveyance and disposal, or different type of wastewater treatment plant if the proposed facility complies with the applicable rules and statutes. The ED evaluates the outfalls in the proposed locations, determines the appropriate effluent limitations, and determines whether water quality standards will be maintained. If the Applicant were to request a

change of the discharge location, the ED would review the new proposal using the same standards.

Texas Water Code (TWC), § 26.0282, provides that in considering the issuance, amendment, or renewal of a permit to discharge waste, the Commission may deny or alter the terms and conditions based on consideration of need. These conditions include the expected volume and quality of the effluent and the availability of existing or proposed area-wide or regional waste collection, treatment, and disposal systems. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater. The TWC, § 26.081, authorizes the TCEQ to "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state."

The Domestic Technical Report requires information concerning regionalization of wastewater treatment plants. The Applicant is required to review a three-mile area surrounding the proposed facility to determine if there are wastewater treatment plants or sewer collection lines with sufficient existing capacity to accept the proposed volume of wastewater. The Applicant identified two existing wastewater treatment facilities within three miles. The LCRA owns both the McKinney Rough and the Windmill Ranch facilities. However, neither plant has sufficient existing capacity to accept the proposed volume of wastewater.

COMMENT 9:

Darlene and William Pendell are concerned about the flood conditions in the area.

RESPONSE 9:

TCEQ does not address flooding issues in the wastewater permitting process. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. The draft permit includes effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding.

The permit application indicates the facility is located above the 100-year flood plain. In addition, the maximum proposed flow of 250,000 gpd, assuming a uniform discharge over 24 hours, is equal to a flow of 0.387 cubic feet per second (cfs). Less than 1cfs flow is not expected to cause any significant increase in the water flow in the gully.

For flooding concerns, please contact the local floodplain administrator for this area. If you need help locating the local floodplain administrator, please call the TCEQ Resource Protection Team at (512) 239-4691.

COMMENT 10:

Jeff Long and Deana Spellman commented that South Central Water Company did not publish the notice in a newspaper with a wider circulation. They added that they should have published the notice in the *Austin American-Statesman* or the *New York Times* rather than the *Bastrop Advertiser*.

RESPONSE 10:

Available records indicate that South Central Water Company published the Notice of Application and Intent to Obtain Water Quality Permit (NORI) on August 25, 2007 in *The Bastrop Advertiser*. The Notice of Application and Preliminary Decision (NAPD) was published October 11, 2007 in *The Bastrop Advertiser*. On a Public Notice Verification Form dated August

25, 2007, South Central Water Company verified that a copy of the complete water quality application, and any revisions, were available for review and copying at the Bastrop Public Library, 1100 Church Street, Bastrop, Texas for the duration of the public comment period.

Following comments received during the public meeting on July 15, 2008, Aqua Water Supply Corporation became the sole Applicant in this matter. The Applicant then published a combined NORI and NAPD on February 6, 2009 in the *Austin American-Statesman* as well as on February 5, 2009 in *Ahora Si!* and *The Bastrop Advertiser*. On a Public Notice Verification Form dated February 11, 2009, the Applicant verified that a copy of the complete water quality application, draft permit, and any revisions were available for review and copying at the Bastrop Public Library, 1100 Church Street, Bastrop, Texas for the duration of the extended public comment period.

In response to the comments received at the public meeting, the Applicant published the combined NORI and NAPD in the commenters' newspaper of choice — the *Austin American-Statesman*. A review of the published notices in this case indicates that the Applicant complied with the notice requirements in Chapter 39 of the Commission rules.

COMMENT 11:

Chad Martin commented that the antidegradation review was unsatisfactory and did not address human health and ecological risks.

RESPONSE 11:

TCEQ staff conducts an antidegradation review on new permit applications and permit amendments that would increase pollution loading to a water body. In Texas, there are three levels of antidegradation reviews. A Tier 1 antidegradation review applies to all water bodies and ensures that an increase in pollution loading will not impair existing water quality uses and will

maintain the criteria associated with those uses. A Tier 2 antidegradation review applies to water bodies that have intermediate, high, or exceptional aquatic life uses and a contact recreation use. This review ensures that water quality that exceeds the normal range of fishable/swimmable criteria will be maintained unless lowering it is necessary for important economic or social development. A Tier 3 antidegradation review was not done in this case because "outstanding national resource waters" are not implicated. *See* 30 TAC § 307.5(b).

During the water quality standards review, TCEQ staff assigns appropriate uses and criteria to the receiving waters. TCEQ uses these standards to determine effluent limits and other requirements necessary to protect and maintain water quality. For the antidegradation review, TCEQ staff follows the guidance for antidegradation implementation contained in the TSWQS and its implementation procedures. The TSWQS protects surface water, aquatic and terrestrial life, and human health. TCEQ also uses the pollutant analysis of treated effluent, the Texas Water Quality Inventory, and characteristics of the water body and local aquatic communities, when conducting an antidegradation review. TCEQ evaluates potential parameters of concern typically associated with the type of proposed effluent discharge to determine whether sufficient potential for degradation exists. In the Tier 1 review, TCEQ staff preliminarily determines if the proposed permit action will impair existing uses. In the Tier 2 review, they also determine if there will be significant degradation of water quality in water bodies with exceptional, high, or intermediate aquatic life uses. In addition, they evaluate any draft permit associated with the permit application to ensure compliance with the TSWQS.

Based on these evaluations, a Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily

determined that no significant degradation of water quality is expected in Segment No.1428, which has been identified as having exceptional aquatic life use. Existing uses will be maintained and protected. TCEQ can reexamine and may modify the preliminary determination if it receives new information.

COMMENT 12:

Shirley Adams commented that the LCRA fined the developer for Double Eagle Estates, Mr. Parker, \$5000.00 for polluting Lick Creek and wanted assurance that there would not be similar occurrences. She also wanted to know the Applicant's compliance history.

RESPONSE 12:

The application does not indicate that Mr. Parker is the owner, co-owner, or operator of the proposed facility; therefore, Mr. Parker was not part of the review process. However, the Applicant owns and operates many wastewater treatment facilities in the State. In this instance, the Applicant has not begun discharging and there are no compliance issues. Therefore, the site rating is "average by default." Using an assigned customer number, TCEQ was able to review an entire compliance history that includes all types of facilities authorized by the TCEQ and operated by the Applicant. The classification for the Applicant is "average" with a rating of 0.59.

The ED determined that the proposed draft permit is protective of the environment, water quality, and human health. If the Applicant operates and maintains the facility as required by the proposed permit and regulations, the draft permit will meet TCEQ rules and requirements. To report complaints about this facility should the TCEQ issue the permit, please contact the Austin Regional Office at (512) 339-2929, or call the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. You may also file citizen complaints on-line at www.tceq.state.tx.us/compliance/complaints/index.html. The TCEQ's regional staff investigates

citizen complaints and the commission takes appropriate enforcement action if the investigator documents a violation of the permit terms or the regulations.

COMMENT 13:

Shirley Adams commented that the application's physical description of the facility's location was vague and that she believed that the Applicant intended to relocate the facility.

RESPONSE 13:

The Domestic Administrative Report in the application states that the facility is proposed to be located approximately 1.25 miles north of the intersection of Old 71 and Highway 71 in Bastrop County, Texas. TCEQ staff physically visited the site and did not find the location description to be vague. The Applicant will be required to comply with all applicable notice requirements under the Commission rules if the Applicant proposes to change the location of the facility or the discharge route.

COMMENT 14:

Shirley Adams commented that the Applicant had not listed or properly notified all the adjacent landowners in the permit application. She also asked that TCEQ list all notified adjacent landowners in the Response. Regis Stevenson and Julie Salem stated they were adjacent landowners and that the Applicant did not notify them.

RESPONSE 14:

For new permit and major amendment applications, the Applicant must provide a list of affected landowners and a map showing their location. The Applicant is required to provide notice to landowners owning property located adjacent to the facility and those with property on either side of the receiving stream for approximately one mile downstream from the point of discharge. The Applicant is required to certify that the submitted application is accurate. The

TCEQ mails notice of the application to the affected landowners and others on the mailing list for the application. The TCEQ's Office of the Chief Clerk maintains the mailing list.

Additionally, for all applications (new, major amendment, and renewals), the agency prepares two public notices; the NORI and the NAPD. The Applicant is required to publish these notices in a local newspaper and to provide a copy of the application, proposed draft permit, and the ED's Preliminary Decision in a public place for viewing and copying.

As part of the original permit application, South Central Water Company provided a map and list of adjacent landowners that named the Development Association of Central Texas and South Central Water Company. The TCEQ notified both of them.

COMMENT 15:

The LCRA indicated that it holds a Certificate of Convenience and Necessity (CCN) for the service area that includes the proposed location of the Double Eagle Ranch Wastewater Treatment Facility. LCRA stated that South Central Water Company had not contacted them about the possibility of service from LCRA's facilities.

RESPONSE 15:

South Central Water Company, in their application, indicated that no portion of the proposed service area was located inside another utility's CCN area. By submitting a signed and completed application, an applicant certifies that, to the best of their knowledge and belief, the information submitted is true, accurate, and complete. In the event an applicant becomes aware that it failed to submit any relevant facts or submitted incorrect information in an application or in any report to the ED, it must promptly submit such facts or information.

COMMENT 16:

Bennie and Elizabeth Wallace were concerned that the discharge would cause surface erosion.

RESPONSE 16:

The water quality permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The treated effluent authorized in the draft permit will be discharged into Moss Branch which flows into Dry Creek which flows into the Colorado River Below Town Lake in Segment No. 1428 of the Colorado River Basin. Absent a natural disaster that could inundate the creeks and river, surface erosion is not expected to occur as a result of this permit action. Downstream erosion related to flooding is not typically addressed in the wastewater permitting process. However, the permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effect on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 17:

Darren S. Carroll; Rick Clemens; Deena Spellman; the RCIA; Bennie and Elizabeth Wallace; and Lori Zimmerman requested that TCEQ require more stringent effluent limitations.

RESPONSE 17:

TCEQ conducted an analysis of the discharge using the QUAL-TX model for Moss Branch and Dry Creek, and Colorado River for effluent flows of 50,000 gpd and 250,000 gpd. TCEQ staff used headwater flows consistent with the Water Quality Standards for Moss Branch

and Dry Creek and a headwater flow of 105 cfs for the Colorado River. Based on model results, an effluent set of 5 mg/L CBOD₅, 5 mg/L TSS, 2 mg/L NH₃-N, 1 mg/L P, and 4 mg/L DO is adequate for both flows to comply with the Colorado River Watershed Protection Rule. The effluent set is also adequate to ensure that the dissolved oxygen level will be maintained above the criteria established by the Water Quality Standards Team for Moss Branch (5 mg/L), Dry Creek (5 mg/L), and the Colorado River Below Town Lake (6 mg/L for headwater flows of 150 cfs or greater and 5 mg/L for headwater flows between 150 cfs and the critical low-flow of 105 cfs).

It is not the usual practice to increase permit sampling frequencies unless TCEQ staff observe noncompliance issues. Since the Applicant has not begun discharging and there are no compliance issues, it is not necessary to increase the sampling and testing frequencies at this time.

COMMENT 18:

Darren S. Carroll; Rick Clemens; the RCIA; Deena Spellman; Bennie and Elizabeth Wallace; and Lori Zimmerman opposed the application or asked that it be denied.

RESPONSE 18:

An applicant is required to operate in compliance with the TWC, TCEQ's rules, and the terms of the proposed draft permit. TCEQ may issue a permit if the application meets all administrative and technical requirements to protect water quality. The Executive Director has determined that the application complied with the requisite rules and regulations governing water quality and wastewater discharge permits.

COMMENT 19:

Shirley Adams asked who the site owner is.

RESPONSE 19:

Based on the amended permit application received on November 19, 2008, Aqua Water Supply Corporation is the site owner.

COMMENT 20:

Jeff Long and Chad Martin indicated that Moss Branch, a tributary of the Colorado River, is dry in summer months and they do not agree with the creek's description as intermittent.

RESPONSE 20:

Based on information from the 2004 Digital Ortho Imagery Quarter Quadrangles and the USGS topographical map submitted with the application, Moss Branch and Dry Creek appear to be perennial. The proposed treated effluent will have to meet the limits and criteria set forth in the permit, which have been set at a level to ensure the maintenance of both environmental and public health. TCEQ used this information when the limits and criteria were developed. This determination can be reexamined and may be modified if study-based detailed information can be provided.

COMMENT 21:

Jeff Long asked if TCEQ conducted an environmental impact assessment.

RESPONSE 21:

The mandate and responsibility of the Municipal Wastewater Permitting Team of the TCEQ is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. The permitting process does not require environmental impact assessments or review of any environmental impact statements.

COMMENT 22:

Regis Stevenson and Julie Salem asked that TCEQ postpone the public meeting for 30 days.

RESPONSE 22:

TCEQ received this comment on July 14, 2008. The original Applicant published the public meeting notice on June 7, 2008 and TCEQ held the public meeting on July 15, 2008. Due to the untimely comment, the TCEQ was unable to postpone the public meeting date.

COMMENT 23:

Darlene Pendell expressed her concern that the Applicant may build two wastewater treatment plants on one small parcel of land.

RESPONSE 23:

The draft permit authorizes a discharge of treated domestic wastewater at an interim volume not to exceed a daily average flow of 50,000 gpd and a final volume not to exceed a daily average flow of 250,000 gpd. The Interim phase will be effective upon the date of issuance and will last through the completion of expansion for the Final phase. The Final phase will last through the date of expiration. Because this is an expansion of the initial phase, only one treatment facility will exist on one parcel of land.

COMMENT 24:

Chad Martin expressed his concern that the 7-day average daily maximum, and single grab effluent limitations may not be enough to protect the ecosystem and human health if allowed during multiple events.

RESPONSE 24:

The ED evaluates the appropriateness of the effluent limitations on case-by-case conditions. The 7-day average daily maximum and single grab effluent limitations assumes occurrence of multiple events. The ED has determined that the proposed draft permit is protective of the environment, water quality, and human health. In addition, it will comply with TCEQ rules and requirements if the Applicant operates and maintains the facility as required by the proposed permit and regulations.

COMMENT 25:

Shirley Adams and Jeff Long expressed their concern as to the reliability and efficiency of a Houston-based company (South Central Water Company) to timely respond to emergencies at the plant site.

RESPONSE 25:

Due to public comments received before and during the public meeting, the permit application originally submitted by South Central Water Company was transferred to the current Applicant. Aqua Water Supply Corporation is located in Austin and its proximity to the site should address these concerns.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

The following changes were made in response to the public comments:

1. The permit application was transferred from South Central Water Company to Aqua Water Supply Corporation.
2. The current Applicant reduced the proposed daily average flow from three phases of 50,000, 150,000, and 750,000 gpd to two phases of 50,000 and 250,000 gpd.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By *Mark R. Vickery for Celia Castro*

Celia Castro, Staff Attorney
Environmental Law Division
State Bar No. 03997350
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-5692
Fax: (512) 239-0606

REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on May 8, 2009, the "Executive Director's Response to Public Comment" for Permit No. WQ0014833001 was filed with the Texas Commission on Environmental Quality's Office of Chief Clerk.

Mark R. Vickery for Celia Castro
Celia Castro, Staff Attorney
Environmental Law Division
State Bar No. 03997350

CHIEF CLERKS OFFICE

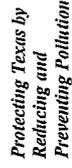
MAY - 8 PM 2:12

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

Executive Director's
Attachment E

Aqua Water Supply Corporation (Double Eagle Ranch) WQ0014833001

Map Requested by TCEQ Legal Services for Commissioner's Agenda



Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087

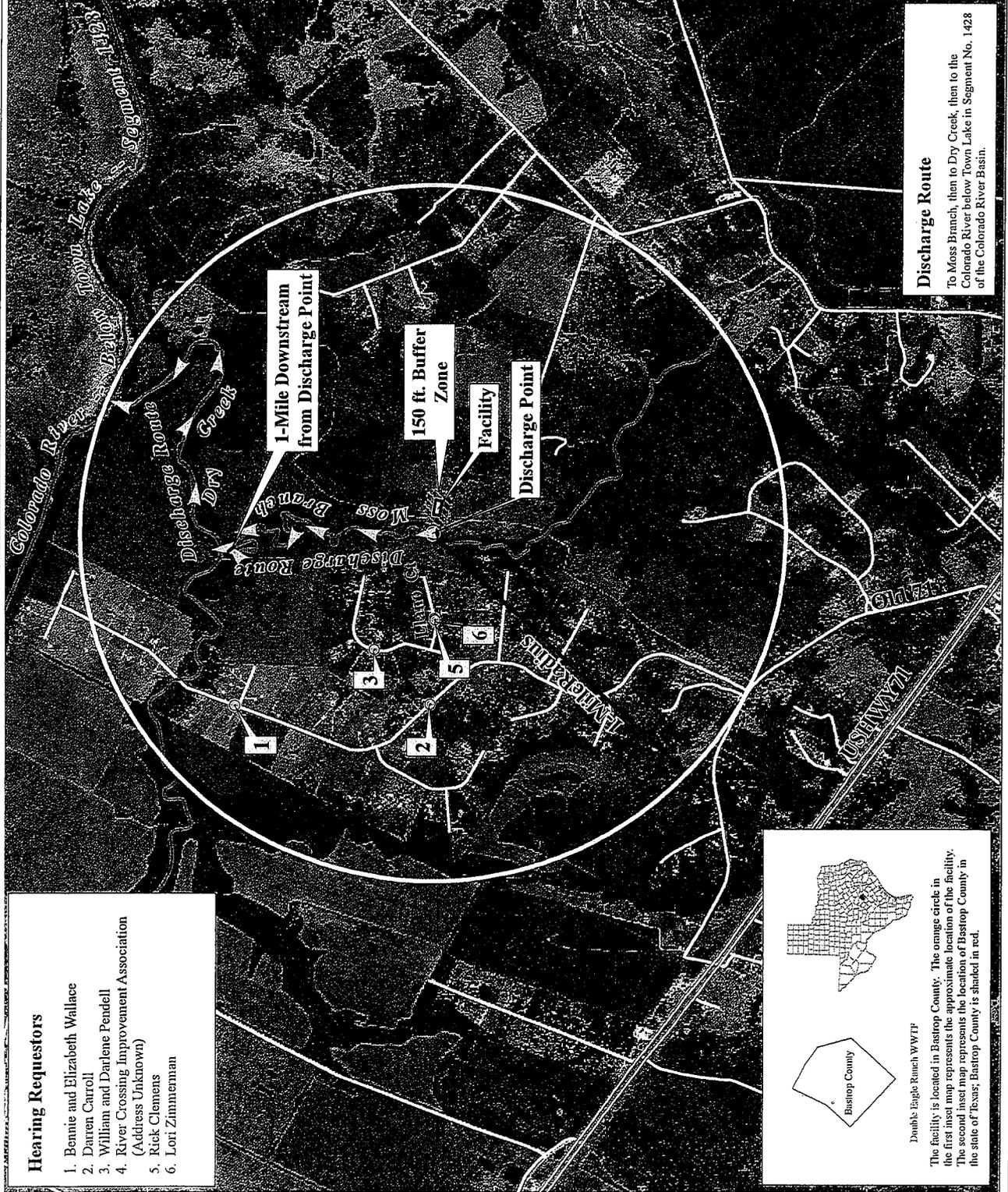
July 29, 2009

0 0.125 0.25 0.5 Miles

Projection: Texas Centric Mapping System
(TCMS) - Albers
Scale 1:27,000

Hearing Requestors

1. Bonnie and Elizabeth Wallace
2. Darren Carroll
3. William and Darlene Pendell
4. River Crossing Improvement Association
(Address Unknown)
5. Rick Clemens
6. Lori Zimmerman



Legend

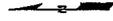
- ⊕ Hearing Requestor (physical address)
- Discharge Point
- Facility Property Boundary
- 1-Mile Radius
- ~ Discharge Route

Source: This map was requested by TCEQ's Office of Legal Services (OLS). The location of the facility was provided by OLS. The property boundaries depicted were manually digitized and approximated (survey data not available) using paper maps provided by OLS.

Hearing Requestor addresses were provided by OLS and geocoded using Tele Atlas Streets 2009 geodatabase technology.

Measurements provided are estimates and have not been measured with precise ground-based instrumentation.

The DOQQ (Digital Orthophoto Quarter Quadrangle) aerial imagery was obtained from the USDA Farm Service Agency's National Agriculture Imagery Program (NAIP). The imagery is from 2008 at one-meter resolution.



This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor and is intended for illustrative purposes only. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-4800.

Discharge Route

To Moss Branch, then to Dry Creek, then to the Colorado River below Town Lake in Segment No. 1428 of the Colorado River Basin.



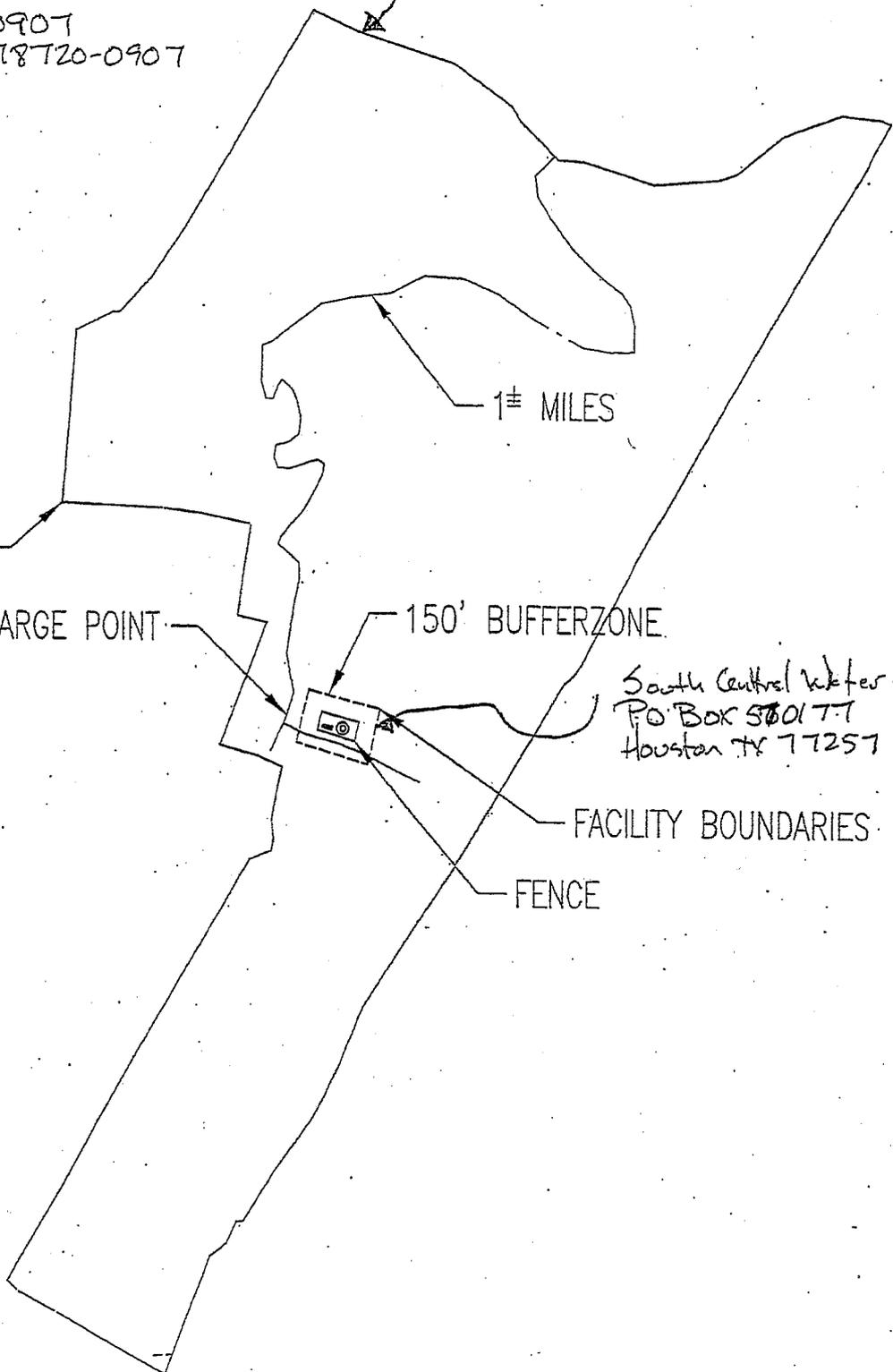
Double Eagle Ranch WWTFF

The facility is located in Bastrop County. The orange circle in the first inset map represents the approximate location of the facility. The second inset map represents the location of Bastrop County in the state of Texas; Bastrop County is shaded in red.

Executive Director's
Attachment F

Attachment 'G'
Affected Landowner Information
Domestic Administrative Report 1.1 page 12 Item 1a

Development Assoc. of Central Texas
PO Box 200907
Austin TX 78720-0907



1 $\frac{1}{2}$ MILES

AREA SERVED

DISCHARGE POINT

150' BUFFERZONE

South Central Water Co
PO Box 580177
Houston TX 77257

FACILITY BOUNDARIES

FENCE



DOUBLE EAGLE RANCH
PROPERTY OWNERS MAP

Permit No. WQ0014833001, South Central Water Company

SOUTH CENTRAL WATER CO
PO BOX 570177
HOUSTON TX 77257

DEVELOPMENT ASSOC OF CENTRAL TX
PO BOX 200907
AUSTIN TX 78720-0907