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 13, 2009

TO: Persons on the attached mailing list.

RE: City of Patton Village
TPDES Permit No. WQ0014926001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Patton Village City Hall, 16940 Main Street, Splendora, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

(1) Your name, address, daytime telephone number, and, if possible, a fax number.

(2) If the request is made by a group or association, the request must identify:
   (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
   (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.

(3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.

(4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at http://www.tceq.state.tx.us/about/comments.html or by mail to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,

LaDonna Castañuela
Chief Clerk

LDC/ka

Enclosures

MAILING LIST
for
City of Patton Village
TPDES Permit No. WQ0014926001

FOR THE APPLICANT:

The Honorable Pamela Munoz, Mayor
City of Patton Village
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Splendora, Texas 77372

George Lazaro
J.F. Fontaine & Associates, Inc.
P.O. Box 530540
Harlingen, Texas 78553

PROTESTANTS/INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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FOR OFFICE OF PUBLIC ASSISTANCE
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FOR THE CHIEF CLERK
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Office of Chief Clerk MC-105
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TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2009 MAY 11 PM 4: 21

CHIEF CLERKS OFFICE

PROPOSED TPDES PERMIT NO. WQ0014926001

APPLICATION BY	§	**BEFORE THE**
CITY OF PATTON	§	**TEXAS COMMISSION**
VILLAGE	§	**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 the City of Patton Village's (Applicant) application for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No.WQ0014926001, and the ED's preliminary decision. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 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 from Adriana Casenave, Gino Garza, Tamara Garza, Gloria Giarrusso, Mary Stubblefield, and Richard Stubblefield. This Response addresses all such timely public comments received, whether or not withdrawn.

BACKGROUND

Description of Facility

The Applicant has applied to the TCEQ for a new permit that would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 350,000 gallons per day. The facility will be an activated sludge process plant operated in the complete mix aeration mode. Treatment units include lift station, bar screens, aeration basins, final clarifiers, aerobic sludge digesters, sludge drying beds and chlorine contact chamber. The facility has not been constructed.

The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l $CBOD_5$ (five day carbonaceous biochemical oxygen demand), 15 mg/l TSS (total suspended solids), 3 mg/l NH_3-N (ammonia-nitrogen) , 126 *E. coli* Bacteria colonies 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 treated effluent will be discharged to Peach Creek in Segment No. 1011 of the San Jacinto River Basin. The designated uses for Segment No. 1011 are high aquatic life uses, public water supply and contact recreation. The effluent limitations in the draft permit are expected to maintain and protect the existing instream uses. In accordance with 30 TAC § 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 would 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 Peach Creek, which has been identified as having high 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.

Procedural Background

TCEQ received the permit application on September 15, 2008, and declared it administratively complete on November 18, 2008. The English Notice of Application and Intent to Obtain Water Quality Permit (NORI) was published on December 10, 2008 in *East Montgomery County Observer*. The Spanish Notice of Application and Intent to Obtain Water Quality Permit (NORI) was published on December 17, 2008 in *La Prensa de Houston*. The English Notice of Application and Preliminary Decision (NAPD) was published on February 18, 2009 in *East Montgomery County Observer*. The Spanish Notice of Application and Preliminary Decision (NAPD) was published on February 25, 2009 in *La Prensa de Houston*. The public comment period ended on March 23, 2009. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

Access to Rules, Laws and Records

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

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

Commission records for this facility are available for viewing and copying. Those records are located at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor, Office of the Chief Clerk, (for the current application until final action is taken) and at TCEQ's Region 12 Office located at 5425 Polk Street, Suite H, Houston, Texas 77023-1452. The application for this facility is available for viewing and copying at the Patton Village City Hall, 16940 Main Street, Splendora, Texas, since publication of the NORI. The permit application, draft permit, statement of basis/technical summary, and ED's preliminary decision have been available for viewing and copying at the same location since publication of the NAPD.

COMMENTS AND RESPONSES

COMMENT 1:

Adriana Casenave, Gino Garza, Tamara Garza and Gloria Giarrusso are concerned that the treated wastewater discharge will impact water quality and impair recreational uses.

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 designated uses for Segment No. 1011 are high aquatic life uses, public water supply and contact recreation. The draft permit includes effluent limitations of 10 mg/l $CBOD_5$, 15 mg/l TSS, 3 mg/l NH_3-N, 126 *E. coli* Bacteria colonies per 100 ml and 4.0 mg/l minimum dissolved oxygen (DO); disinfection; and monitoring requirements to ensure that the proposed discharge will not violate the Texas Surface Water Quality Standards for the protection of surface water, groundwater, aquatic and terrestrial life, and human health. It also includes additional requirements for the wastewater treatment system to ensure the protection of water quality and human health; and for the disposal of domestic sludge generated from the wastewater treatment facility.

In accordance with 30 TAC § 307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards (TSWQS), 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 Peach Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be re-examined and may be modified if new information is received.

The ED determined that the proposed draft permit is protective of the environment, water quality, and human health and that it meets TCEQ rules and requirements if the Applicant operates and maintains the facility as required by the proposed permit and regulations. To report complaints about the facility if the permit is issued, please contact the TCEQ at 1-888-777-3186 to reach the TCEQ regional office in your area. Citizens may also report suspected incidents of non-compliance through the commission's Web site by following the menu for "Reporting" and "Reporting Environmental Problems to TCEQ" at http://www.tceq.state.tx.us. TCEQ's regional staff investigates citizen complaints and the commission takes appropriate enforcement action if the investigator documents a violation of regulations.

COMMENT 2:

Adriana Casenave, Gino Garza, Tamara Garza and Gloria Giarrusso are concerned about the flood conditions in the area.

RESPONSE 2:

TCEQ does not have jurisdiction to 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 Applicant is required to comply with 30 TAC § 309.13(a) prohibiting the location of a wastewater treatment plant unit "in the 100-year flood plain unless the plant unit is protected from inundation and damage that may occur during that flood event." The permit application indicates the facility is located above the 100-year flood plain. In addition, the maximum proposed flow of 350,000 gallons per day, assuming a uniform discharge over 24-hours, is equal to a flow of 0.541 cubic feet per second. Less than one cubic foot per second is not a volume of water that is expected to cause any significant increase in the water flow in Peach Creek.

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

COMMENT 3:

Adriana Casenave, Gino Garza, Tamara Garza and Gloria Giarrusso asked if Peach Creek meets the state standard for Water Quality.

RESPONSE 3:

ED staff conducts an antidegradation review on new permit applications and permit amendments that would increase pollutant loading to a water body. In Texas, there are two levels of antidegradation reviews. A Tier 1 antidegradation review applies to all water bodies and ensures that an increase in pollutant 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.

During the water quality standards review, ED staff assigns appropriate uses and criteria to the receiving waters. These uses and criteria are the standards used by ED staff to determine effluent limits and other requirements necessary to protect and maintain water quality. For the antidegradation review, ED staff follows the guidance for antidegradation implementation contained in the TSWQS Implementation Procedures and the TSWQS. ED staff also uses available information, including 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. ED staff evaluates potential parameters of concern typically associated with the type of proposed effluent discharge to determine whether sufficient potential for degradation exists.

The designated uses for Segment No. 1011 are high aquatic life uses, public water supply and contact recreation. The DO criterion is 5 mg/l. 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 Peach Creek, which has been identified as having high 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.

In addition, an analysis of the proposed discharge was conducted using a default QUAL-TX model. The outfall is located in Montgomery County. A headwater flow of 10.36 cfs was assigned to the receiving waters in the analysis. Based on model results, the proposed effluent set of 10 mg/L $CBOD_5$, 15 mg/l TSS and 3 mg/L NH_3-N and 4 mg/L DO is predicted to be adequate to ensure that the dissolved oxygen level in the receiving stream will be maintained above the criterion (5 mg/L). In addition, these limits comply with the requirements of the Lake Houston Watershed Protection Plan, found at 30 TAC, Chapter 311. The watershed protection plan contains rules regarding domestic and industrial effluent, land disposal, domestic solids treatment, and disinfection to protect the watershed from contamination.

COMMENT 4:

Adriana Casenave, Gino Garza, Tamara Garza and Gloria Giarrusso state that they are aware that HGAC is studying the problem of excess bacteria in Lake Houston, and that the TCEQ, through a TMDL project, is trying to determine the causes. They are concerned that the treated wastewater discharge to Peach Creek may contribute to excess bacteria in Lake Houston.

RESPONSE 4:

The TMDL for Segment No. 1011 is not yet complete. However, effluent discharged into water in the state from facilities regulated under the TPDES must meet the TSWQS. The TSWQS and other applicable rules are intended to be protective of aquatic life, human health, and the environment, including the designated uses of the receiving waters. The draft permit for the proposed facility meets the requirements of the TSWQS. The TCEQ does not anticipate that constituents in the discharge will have an adverse effect on the receiving water or its designated uses.

The draft permit requires the facility to chlorinate for disinfection purposes. Disinfection by chlorination is designed to remove harmful bacteria in the effluent, as well as most other disease causing organisms. Facilities that properly disinfect by chlorination tend to have low, non-threatening levels of bacteria and coliform colonies. TCEQ rules require disinfection in a manner conducive to the protection of both public health and aquatic life by requiring a minimum detention time for the wastewater in the chlorination chamber and a minimum chlorine residual in the effluent to continue disinfection after discharge. The rules and draft permit also set a maximum chlorine residual that should not impact aquatic life in the receiving waters.

In addition, in order to ensure that the proposed discharge meets the stream bacterial standard, an effluent limitation of 126 colonies *E. coli* bacteria per 100 ml has been added to the draft permit with a monitoring frequency of once per week.

COMMENT 5:

Adriana Casenave, Gino Garza, Tamara Garza and Gloria Giarrusso commented that they asked for a deadline for public meeting but have not received an answer.

RESPONSE 5:

TCEQ holds a public meeting if the Executive Director determines that there is a substantial or significant degree of public interest in the application, if requested by a local legislator, or if otherwise required by law. A public meeting is not a contested case hearing. TCEQ received a request for public meeting from Adriana Casenave, Gino Garza, Tamara Garza and Gloria Giarrusso. After examining the degree of public interest, the Executive Director determined that no public meeting would be held on this permit application.

COMMENT 6:

Mary Stubblefield and Richard Stubblefield contested the permit. Adriana Casenave, Gino Garza, Tamara Garza and Gloria Giarrusso commented that they asked for a deadline for a contested hearing but have not received an answer.

RESPONSE 6:

After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material or significant public comments. The response to comments will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. A request for "contested case hearing must be filed no later than 30 days after the chief clerk mails . . . the executive director's decision and response to comments and provides instructions for requesting that the commission . . . hold a contested case hearing." *See* 30 TAC § 55.201(a). A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

To request a contested case hearing, you must include the following items in your request: your name; address, phone; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above

regarding the affected member or members' location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are germane to the group's purpose.

COMMENT 7:

Mary Stubblefield and Richard Stubblefield requested for supplemental information on the permit.

RESPONSE 7:

The commenters have not clearly indicated the type of supplemental information requested. However, TCEQ rules require an applicant to place a copy of the administratively complete application in a public place for review and copying by the public. On a Public Notice Verification Form dated January 04, 2009, the City of Patton Village has verified to the Executive Director that a copy of the complete TPDES application, and any revisions, were available for review and copying at the Patton Village City Hall, 16940 Main Street, Splendora, Texas, throughout the duration of the public comment period. On a Public Notice Verification Form dated February 24, 2009, the City of Patton Village verified that a copy of the complete TPDES application, draft permit, and any revisions were available for review and copying at the Patton Village City Hall, 16940 Main Street, Splendora, Texas, from the first day after newspaper publication. The application, draft permit, and any revisions must remain in the designated public place until either the TCEQ acts on the application or the application is referred to the State Office of Administrative Hearings (SOAH) for hearing.

COMMENT 8:

Adriana Casenave, Gino Garza, Tamara Garza and Gloria Giarrusso commented that the treated wastewater will come directly into their own back yards.

RESPONSE 8:

The Texas Water Code, § 26.121, authorizes discharges into waters of the state, provided the discharger obtains a permit from the Commission. TCEQ does not have the authority to mandate a different discharge location or different type of wastewater treatment plant. TCEQ evaluates applications for wastewater treatment plants, based on the information provided in the application. Finally, the issuance of a permit does not grant to Applicant the right to use private or public property for conveyance of wastewater along the discharge route described in the permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation, or other entity. Neither does the permit authorize any invasion of personal or property rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the Applicant to acquire property rights as may be necessary to use the discharge route.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By _____

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