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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

May 28, 2009

TO: Persons on the attached mailing list.

RE: Eagle Star Investments, LLP
TPDES Permit No. WQ0014918001

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 the George and Cynthia Woods Mitchell Library, 8125 Ashlane Way, The Woodlands, 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/ms

Enclosures

MAILING LIST
for
Eagle Star Investments, LLP
TPDES Permit No. WQ0014918001

FOR THE APPLICANT:

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PROTESTANTS/INTERESTED PERSONS:

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PROPOSED TPDES PERMIT NO. WQ0014918001

CHIEF CLERKS OFFICE

APPLICATION BY § BEFORE THE
EAGLE STAR INVESTMENTS, L.L.P. § 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 Eagle Star Investments, L.L.P.'s (Applicant) application for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014918001, 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 Jesus Gallegos and Mollie McLean. 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.

ACCESS TO RULES, LAWS, AND RECORDS

The following websites may be useful:

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 and are located at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk, for the current application until final action is taken), and at

TCEQ's Region 12 Office, 5425 Polk Street, Suite H, Houston TX 77023-1452. The application for this facility has been available for viewing and copying at the George and Cynthia Woods Mitchell Library, 8125 Ashlane Way, The Woodlands, Texas since publication of the NORI. The draft permit, statement of basis/technical summary, and Executive Director's preliminary decision have been available for viewing and copying at the same location since publication of the combined Notice of Application and Preliminary Decision (NAPD).

BACKGROUND

Description of Facility

Eagle Star Investments, L.L.P. (the Applicant) has applied to the TCEQ for a new TPDES Permit No. WQ0014918001 that would authorize the Applicant to discharge treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The proposed facility is planned to serve the Fort Bend Municipal Utility District No. 134. The treated effluent will be discharged to Bear Branch; then to Bear Branch Reservoir; then to Bear Branch; then to Panther Branch; then to Lake Woodlands; then to Panther Branch; and then to Spring Creek in Segment No. 1008 of the San Jacinto River Basin. The unclassified receiving water uses are limited aquatic life uses for Bear Branch and high aquatic life uses for Bear Branch Reservoir. The designated uses and dissolved oxygen criterion as stated in Appendix A of the Texas Surface Water Quality Standards (30 TAC Section 307.10) for Segment No. 1008 are high aquatic life uses, public water supply and contact recreation. The facility will be located approximately 1,800 feet northeast of the intersection of Woodlands Parkway and Farm-to-Market Road 2978 in Montgomery County, Texas.

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 Bear Branch Reservoir, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Procedural Background

The application was received on July 29, 2008, and declared administratively complete on September 4, 2008. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI) was published on December 31, 2008 in the *Houston Chronicle* in English, and on December 31, 2008 in the *La Voz De Houston* in Spanish. The Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater (NAPD) was published on February 25, 2009 in the *Houston Chronicle* in English, and on February 25, 2009 in the *La Voz De Houston* in Spanish. The public comment period ended on March 27, 2009. This application was

administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, (76th Legislature, 1999).

COMMENTS AND RESPONSES

COMMENT 1

Jesus Gallegos is requesting a contested case hearing in protest of the proposed permit application to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. He expressed concern about the proximity of the proposed wastewater treatment facility to his property, and the potential for nuisance odor emanating from the wastewater treatment facility, which is planned to be located on Woodlands Parkway and Farm-to-Market Road 2978.

RESPONSE 1

Under 30 TAC § 55.211, the Commission will decide whether to grant a hearing request unless the matter is directly referred to the State Office of Administrative Hearings. Request for contested case hearings are reviewed under 30 TAC §§ 55.201, 55.203, 55.205, and 55.209. The Commission will consider all relevant factors in the evaluation of whether a request for hearing should be granted, including whether the requestor is an affected person with a “personal justiciable interest related to a legal right, duty, privilege, power, or economic interest” that would be affected by the application. In deciding whether a hearing requestor is an affected person, the Commission will consider whether the interest claimed is one protected by the law under which the application will be considered; distance restrictions or other limitations imposed by law on the affected interest; whether a reasonable relationship exists between the interest claimed and the activity regulated; likely impact of the regulated activity on the health, safety, and use of property of the person, and other applicable conditions. The Commission will make this decision at a public meeting after notice to hearing requestors.

Regarding the proposed location for the wastewater treatment plant, the permit application indicates that the location of the plant will not violate 30 TAC 309.13(a) through (d). That rule requires that a wastewater treatment plant unit may not be located in the 100-year flood plain unless the plant unit is protected from inundation and damage that may occur during that flood event; that a wastewater treatment plant unit may not be located in wetlands, and a wastewater treatment plant unit may not be located closer than 500 feet from public water well nor 250 feet from a private water well.

30 TAC § 309.13(e) requires that the Applicant meet one of three options to abate and control nuisance odor. Those options are: (1) owning the buffer zone area, (2) obtaining restrictive easements from adjacent property owners for any portion of the buffer zone area that the Applicant does not own, or (3) providing odor control.

The draft permit states that permittee shall provide nuisance odor prevention in accordance with 30 TAC Section 309.13(e)(2). Prior to construction of the treatment facility, the permittee shall submit a nuisance odor prevention request for approval by the executive director in care of the TCEQ Wastewater Permitting Section (MC 148). The request for nuisance odor prevention shall be in the form of an engineering report, prepared and sealed by a licensed professional engineer, in support of the request according to the requirements of 30 TAC Section 309.13(e)(2). The permittee shall comply with the requirements of 30 TAC Section 309.13(a) through (d).

Minimizing the generation of nuisance odors from a treatment plant also depends on the design of the plant and the operation and maintenance of the plant. Maintaining an adequate dissolved oxygen concentration in the early stages of treatment helps to minimize nuisance odor generation. In fact, aeration basins and aerobic digesters are the primary means of odor control at treatment plants of any size. The proposed wastewater treatment will be an aerobic biological process. Aerobic biological processes use oxygen from the air to reduce the organic content of the wastewater through biological action. Oxygen turns sulfide compounds (the most common odor-causing compounds) into odorless sulfates. Wastewater without dissolved oxygen has the potential to produce offensive odors. The draft permit requires that the effluent contain a minimum of 4.0 mg/l of dissolved oxygen, which should be adequate for the plant and odor control.

If nearby residents experience nuisance odor conditions or any other suspected incidents of noncompliance with the permit or TCEQ rules, such conditions may be reported to TCEQ by calling toll-free 1-888-777-3186 or by calling the TCEQ Region 12 Office in Houston at (713) 767-3500. Citizen complaints may also be filed on-line at <http://www.tceq.state.tx.us/compliance/complaints/index.html>. If the Applicant fails to comply with all requirements of the permit, the facility is subject to administrative enforcement action, fines, and penalties.

COMMENT 2

Mollie McLean is requesting a public meeting regarding the proposed wastewater treatment facility. The commenter claims that the proposed location for the wastewater treatment facility is not on the northeast side of the Woodlands Parkway and FM 2978 but on the northwest side. The commenter expressed concern that the proximity of the proposed wastewater treatment facility to their property line will adversely impact their property values and those of other home owners in the area.

RESPONSE 2

Public meetings are intended to take public comment in environmental permitting matters. See 30 TAC § 55.154. The Executive Director is required to hold a public meeting if he (1) “determines that there is a substantial or significant degree of public interest in an application; (2) a member of the legislature who represents the general area in which the facility is located or proposed to be located requests that a public meeting be held; or (3) when a public meeting is otherwise required by law.” The Executive Director has evaluated Ms. McLean’s request for a public meeting in this permitting matter. Ms.

McLean's request for a public meeting is denied under Section 55.154(c)(1) of the Commission rules. The level of public interest in this application is not substantial or significant at this point.

It is the responsibility of the Applicant to determine the location of a proposed wastewater treatment facility. A review of the revised aerial map shows that the proposed wastewater treatment facility if approved, will be located on the northeast intersection of Woodlands Parkway and Farm-to-Market Road 2978 as stated in the draft permit. TCEQ does not have the authority to identify, determine or assign the location of the treatment facility or the discharge point (outfall). The Executive Director however, evaluates the proposed location to ensure that an Applicant for TPDES permit complies with the location requirements contained at 30 TAC § 309.13. In accordance with Section 309.13, an Applicant may not locate a wastewater treatment plant unit in the 100-year flood plain unless protective measures are designed to protect the plant against a 100-year flood event; a wastewater treatment plant unit may not be located in wetlands; and the Applicant is required to comply with the buffer zone requirements with respect to water wells and location of wastewater treatment plant units.

The legislature has given the TCEQ the responsibility to protect water quality. However, neither the Texas Water Code nor the applicable TCEQ rules authorize the ED to consider property value when reviewing a TPDES permit application. Therefore, the ED lacks regulatory authority to consider potential impact on property value in the area when reviewing wastewater applications and preparing draft permits.

The issuance of this permit does not limit the ability of nearby landowners to use common law remedies to seek redress for any interference with the use and enjoyment of their property. The issuance of this permit does not grant the permittee the right to use private or public property to convey wastewater along the discharge route described therein. The issuance of this permit does not authorize any invasion of personal rights, or any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire any property rights that may be necessary to use the discharge route.

The TCEQ conducts periodic inspections of wastewater treatment facilities and also conducts investigations based on complaints received from the public. If a permit is issued and the facility is constructed, to report complaints about the facility please contact the TCEQ at 1-888-777-3186 to reach the appropriate TCEQ Regional Office or by e-mail at complaint@TCEQ.state.tx.us. Citizen complaints may also be filed on-line at <http://www.tceq.state.tx.us/compliance/complaints>. Noncompliance with TCEQ rules or the permit may result in an enforcement action.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

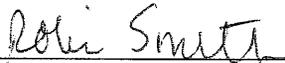
No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division



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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on May 27, 2009, the "Executive Director's Response to Public Comment" for Permit No. WQ0014918001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

Robin Smith

Robin Smith, Attorney
Environmental Law Division
State Bar No. 24058069

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