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

June 2, 2009

TO: Persons on the attached mailing list.

RE: Las Lomas Municipal Utility District No. 4 of Kaufman County
TPDES Permit No. WQ0014803001

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 Terrell Public Library, 301 North Rockwall Street, Terrell, 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

LaDonna Castañuela
Chief Clerk

LDC/ka

Enclosures

MAILING LIST
for
Las Lomas Municipal Utility District No. 4 of Kaufman County
TPDES Permit No. WQ0014803001

FOR THE APPLICANT:

Angela Stepherson
Las Lomas MUD No. 4 of Kaufman County
c/o Coats/Rose
5420 LBJ Freeway, Suite 1300
Dallas, Texas 75240-6299

Yanbo Li, P.E.
Petitt and Associates, Inc.
300 Municipal Drive
Richardson, Texas 75080

Adam Conway, P.E.
Petitt and Associates, Inc.
300 Municipal Drive
Richardson, Texas 75080

PROTESTANTS/INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Robert D. Brush, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Kent Trede, 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 electronic mail:

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

BATES , JAMES & KATHY L
9625 N FM 148
TERRELL TX 75160-6524

BATES , KATHY
9625 N FM 148
TERRELL TX 75160-6524

BENAVIDEZ , AGRIPINA & ANDRES
9024 N FM 148
TERRELL TX 75160

BENAVIDEZ , AGRIPINA & ANDRES
PO BOX 2245
TERRELL TX 75160-0042

BENAVIDEZ , ANDRES & RHONDA
9024 N FM 148
TERRELL TX 75160-7418

BENAVIDEZ , ANDY & RHONDA
9024 N FM 148
TERRELL TX 75160-7418

BROWN , THE HONORABLE BETTY
TX HOUSE OF REPRESENTATIVES DIST 4
PO BOX 2910
AUSTIN TX 78768-2910

CALDWELL , GLENN
PO BOX 210
TERRELL TX 75160-0004

FLEWELLEN , JAMES & PAT
8149 COUNTY ROAD 272
TERRELL TX 75160-7525

HERRING , JACK
8077 WILLOW LN
TERRELL TX 75160-6803

HOWLAND , ZOE
2812 FM 987
KAUFMAN TX 75142-5324

JOHNSON , KAREN & MICHAEL
8141 COUNTY ROAD 272
TERRELL TX 75160-7525

JUNGJOHANN , JANICE & MILOWE
9601 N FM 148
TERRELL TX 75160-6524

MCDOUGAL , JONATHON & JULIE
8066 WILLOW LN
TERRELL TX 75160-6836

SIMS , JERRY & MARGIE
8720 N FM 148
TERRELL TX 75160-7416

SPECKMAN , JEFF & TERRY
9172 N FM 148
TERRELL TX 75160-7419

TIMMONS , NELDA & STEVE
NO 402
4226 BASS PRO DR
GARLAND TX 75043-8515

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

TCEQ PROPOSED PERMIT NO. WQ0014803001

2009 MAY 29 PM 1:59
CHIEF CLERKS OFFICE

APPLICATION BY LAS LOMAS MUNICIPAL UTILITY DISTRICT 4 TPDES Permit No. WQ0014803001	§ § § §	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 Las Lomas Municipal Utility District #4 (Applicant) application for a new Texas Pollutant Discharge Elimination System (TPDES) permit number WQ0014803001 and 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 timely received comment letters or comments at the public meeting from the following persons:

James & Kathy Bates, Andres & Rhonda Benavidez, Andres & Agripina Benavidez, James & Pat Flewellen, Jack Herring, Zoe Howland, Karen & Michael Johnson, Milowe & Janice Jungjohann, Julie & Jonathon McDougal, Jeff & Terry Spezkmann, and Steve & Nelda Timmons.

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.

Additional Information

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 4 Office at 2309 Gravel Drive, Fort Worth, Texas 76118. The Region 4 phone number is (817) 588-5700. The permit application, statement of basis/technical summary, ED's preliminary decision, and the draft permit are available for viewing and copying at the Terrell Public Library, 301 North Rockwall Street, Terrell, Texas.

BACKGROUND

Description of Facility

The Applicant originally applied for a new permit to authorize the discharge of treated domestic wastewater at an interim I volume not to exceed a daily average flow of 250,000 gallons per day (gpd), an interim II volume not to exceed a daily average flow of 875,000 gpd and a final volume not to exceed an annual average flow of 1.5 million gpd. Subsequently, ED staff received additional information regarding the receiving stream. Based on that information, it was determined that the maximum permitted flow should be reduced to 500,000 gpd in order to protect instream uses and maintain the minimum dissolved oxygen in the stream. The proposed wastewater treatment facility will serve the Las Lomas development.

The plant site will be located approximately 2.5 miles southwest of the intersection of State Highway 20 and Farm-to-Market Road 148 at the confluence of Big Brushy Creek and Terry Creek in Kaufman County, Texas. The treated effluent will be discharged to Terry Creek; then to Big Brushy Creek; then to King's Creek; then to Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin. The unclassified receiving water uses are limited aquatic life use for Terry Creek and high aquatic life use for Big Brushy Creek. The designated uses for Segment No. 0818 are contact recreation, public water supply, and high aquatic life use.

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 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 preliminarily determined that no significant degradation of water quality is expected in Big Brushy Creek, which has been identified as having high aquatic life uses. Existing uses should be maintained and protected. The preliminary determination can be further re-examined and modified if additional new information is received.

Procedural Background

The permit application for a new permit was received on May 4, 2007 and declared administratively complete on May 30, 2007. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on June 14, 2007 in the *Terrell Tribune*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on October 4, 2007 in the *Terrell Tribune*. The Applicant published an alternative langue NAPD on October 23, 2007 in the *La Prensa Communidad*. A public meeting request was received from

State Representative District 4 Betty Brown and a Notice of Public Meeting was published on January 9, 2008 in the *Terrell Tribune*. The public meeting was held on February 21, 2008.

Subsequent to the public meeting, the Applicant discovered they had not properly mailed notice to the required landowners. Therefore, after the Applicant corrected their mailing list, the Office of the Chief Clerk re-noticed the NAPD to those persons on the mailing list on June 25, 2008 and the comment period ended on July 25, 2008. After the close of the comment period, a second public meeting was requested by Rep. Brown on July 31, 2008. Rep. Brown withdrew her request for a second public meeting on January 23, 2009. Additional time was taken due to the lowering of the maximum permitted amount from 1.5 mgd to 500,000 gpd for the Applicant to consider whether to continue to seek permit coverage based on the lower maximum discharge amount. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

COMMENT 1:

Andres & Rhonda Benavidez, Andres & Agripina Benavidez, Jack Herring and Steve & Nelda Timmons have concerns regarding the discharge of 1.5 million gallons per day of treated wastewater in their creek and how the proposed discharge may impact human health, livestock, and pets.

RESPONSE 1:

The proposed draft permit includes effluent limitations and monitoring requirements for 5-day Biochemical Oxygen Demand ($CBOD_5$), Total Suspended Solids (TSS), Ammonia Nitrogen, Dissolved Oxygen (DO), chlorine residual, and pH to ensure that discharges from the proposed wastewater treatment plant meet water quality standards for the protection of surface water, groundwater, and human health in accordance with TCEQ rules and policies. The proposed draft permit includes requirements for the disposal of domestic sludge generated from the wastewater treatment facility based on TCEQ rules. The ED expects that human health and the environment will be protected if the Applicant operates and maintains the facility as permitted and in accordance with TCEQ rules. The ED determined that the proposed draft permit is protective of the environment, water quality, and human health in accordance with TCEQ rules and requirements. Any noncompliance with the terms of the proposed draft permit could result in enforcement action against the Applicant.

The Commission does not have specific water-quality based effluent limitations for livestock. However, the TCEQ Water Quality Assessment Section has determined that the proposed draft permit for the facility meets the requirements of the Texas Surface Water Quality Standards, which are established to protect human health and terrestrial and aquatic life. Aquatic organisms are more sensitive to water quality components than terrestrial organisms. In accordance with 30 TAC § 307.5 and the TCEQ implementation procedures for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. This review

preliminarily determined that no significant degradation of high quality waters is expected and that existing uses will be maintained and protected.

In this case, additional information was received about the receiving stream and additional analysis was done. Based on that information it was determined that the maximum permitted discharge should be reduced from 1.5 mgd to 500,000 gpd in order to protect instream uses and maintain the minimum dissolved oxygen in the stream. At this reduced flow, it is expected that existing uses should be maintained and protected as long as the facility is operated in compliance with the draft permit and applicable rules and regulations.

Additionally, the Applicant is required to take certain operational steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, Operational Requirement No. 4 in the draft permit (page 10) states that 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, and/or retention of inadequately treated wastewater.

Permit Condition No. 2(d) in the draft permit (page 7) requires the Applicant to take all reasonable steps to minimize or prevent any discharge, disposal, or other permit violation that has a reasonable likelihood of adversely affecting human health and the environment. Permit Condition No. 2(g) in the draft permit (page 7) states that must not be any unauthorized discharge of wastewater or any other waste. These permit provisions are designed to help prevent unauthorized discharges of raw sewage. If an unauthorized discharge occurs, the Applicant is required to report it to TCEQ within 24 hours. If the Applicant fails to report the unauthorized discharge to TCEQ within the prescribed time period, the Applicant will be subject to enforcement by TCEQ. At the time of any accidental discharge, TCEQ and other local governmental entities will determine if nearby residents need to be notified of any leak or runoff based on the severity and potential health impact of the discharge.

In addition, the plans and specifications for this wastewater treatment plant must meet the facility design criteria in 30 TAC Chapter 217 and be approved by TCEQ prior to construction.

COMMENT 2:

Andres & Rhonda Benavidez, Andres & Agripina Benavidez, Jack Herring, and James & Kathy Bates, Milowe & Janice Jungjohann, and Steve & Nelda Timmons have concerns that the treatment plant would generate foul odors. James and Kathy Bates ask whether air quality will change with operation of the proposed facility. Milowe & Janice Jungjohann ask how airborne particles be prevented from leaking into the air.

RESPONSE 2:

Buffer zone requirements were implemented as a means of minimizing the impact nuisance odor on surrounding property. According to the permit application, the Applicant owns the buffer zone required by 30 TAC § 309.13(e). In addition, the draft permit requires the treated effluent

to be disinfected by chlorination in accordance with the TCEQ rules. The major benefit of chlorine in wastewater treatment is disinfecting the wastewater, but it is also helpful in controlling nuisance odor. Nuisance odors may be associated with organic matter and the biochemical oxygen demand exerted on the receiving stream. This permit requires advanced secondary treatment, which removed the vast majority of the oxygen demanding constituents and decreases the likelihood of odor.

Wastewater devoid of dissolved oxygen can produce offensive odors. The draft permit requires that the wastewater discharge contain a minimum of 5.0 mg/l dissolved oxygen so that the treated effluent will be adequately oxygenated when it is discharged.

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 odor generation. In fact, aeration basins and aerobic digesters are the primary means of nuisance odor control at treatment plants of any size. In addition, the draft permit contains operational requirements to ensure the facility is properly operated and maintained.

The Commission is authorized under the Texas Clean Air Act to issue permit-by-rule for certain types of facilities that do not significantly contribute air contaminants to the atmosphere. *See* HEALTH & SAFETY CODE § 382.051(b)(4). Section 382.05196(a) states that: "the commission may adopt permits by rule for certain types of facilities if it is found on investigation that the types of facilities will not make a significant contribution of air contaminants to the atmosphere." The Commission's air quality rules prohibit any person from discharging:

> ...from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property." *See* 30 TAC § 101.4.

Municipal wastewater treatment plants are permitted-by-rule in accordance with 30 TAC § 106.532. Wastewater treatment plant units are permitted by rule if the facility performs the functions listed under § 106.532, including but not limited to disinfection, softening, filtration, flocculation, stabilization, taste and odor control, clarification, carbonation, sedimentation, neutralization, chlorine removal, activated sludge treatment, anaerobic treatment, and associated control of gases from these treatments; etc. This facility is not expected to contribute significant contaminants to the atmosphere if operated and maintained in accordance with the Commission rules and the provisions of the draft permit.

Nuisance odor complaints or other air quality issues regarding the facility or suspected incidents of noncompliance with the permit or TCEQ rules may be reported to the TCEQ Region 4 Office

in Dallas/Fort Worth at 817-588-5800 or by calling the Environmental Violations Hotline at 1-888-777-3186. Citizens can also file an environmental complaint online at:

www.tceq.state.tx.us/compliance/complaints/index.html

Citizens may also submit complaints via email to:

cmplaint@tceq.state.tx.us

The Commission will take appropriate action if any violation is documented.

COMMENT 3:

James and Kathy Bates ask whether this facility will be located on a 100-year flood plain and if so, how the facility will function during flooding events. Milowe and Janice Jungjohann state the facility will be on the 100-year flood plain and ask how the facility will be protected during such a flooding event.

RESPONSE 3:

The facility is not proposed to be within the 100-year flood plain. TCEQ rules do not prevent a wastewater treatment facility from being located on a 100-year flood plain, but instead require that if such location is chosen then the Applicant must protect the wastewater treatment units from inundation and damage from a 100-year flood event. *See* 30 TAC § 309.13(a). The draft permit does include effluent limits and other requirements that the Applicant must meet even during rainfall events and periods of flooding.

COMMENT 4:

James and Kathy Bates ask the age of the topographical and flood plain maps that were used in the permit application.

RESPONSE 4:

The USGS topographic map is dated 1960. The flood plain information is included on page 10, Item 5.a of the Technical Report.

COMMENT 5:

Jeff & Terry Sepzkmann and Milowe & Janice Jungjohann ask what the timeframe is for building the facility from start to finish.

RESPONSE 5:

There is no specific timeframe that an applicant must follow when constructing a wastewater treatment facility. However, Texas Water Code § 26.027(c) prohibits any construction of treatment units prior to a permit being issued, unless authorized by TCEQ. No such authorization has been requested by the Applicant in this case that would allow construction of treatment units prior to actual issuance of the permit.

Page one of the Technical Report indicates the Interim II phase would commence operation in August 2009 and the final phase in August 2011. However, because this permit has not been issued, this timetable can no longer be met with respect to the August 2009 date.

COMMENT 6:

James and Kathy Bates ask whether a water flow evaluation was conducted for both Terry and Brushy Creeks.

RESPONSE 6:

Water flow evaluations were conducted by staff. The immediate receiving stream (Terry Creek) was determined to be intermittent with perennial pools with a low flow of 0.1 cubic feet per second (cfs). Brushy Creek was determined to be perennial with an average flow of 0.36 cfs.

COMMENT 7:

James and Kathy Bates ask how industrial waste will influence Terry Creek, Brushy Creek, Kings Creek, and Cedar Creek Lake.

RESPONSE 7:

The Applicant is neither proposing nor authorized to discharge industrial waste. The permit involves the discharge of treated municipal (human) waste, so no evaluation of industrial wastes were done for these water bodies in regards to evaluating the proposed discharge that would be authorized by the draft permit.

COMMENT 8:

James and Kathy Bates ask whether the proposed Baylor Hospital sewage will be discharged into this wastewater treatment plant. They also ask whether any of the surrounding cities will have sewage treated at the proposed facility.

RESPONSE 8:

The application indicated the facility proposed to serve 4,383 residential units, in the final phase, with 3 residents per unit at 115 gallons per resident. (115 gallons per person per day times 3

persons per connection per day, 4,383 connections = 1,512,000 gpd). However, as noted in Response #1, the maximum discharge authorized by the draft permit was changed to 500,000 gpd. Based on the same estimates of use, the proposed facility could service a maximum of residents (115 gallons times 3 persons per connection per day, 1,449 connections = 499,905 gpd). There is no indication in the application that waste from Baylor Hospital will be accepted at the facility.

Additionally, note that monitoring and reporting Permit Provision 11. of the monitoring and reporting provision of the draft permit requires the Applicant to provide notice to the ED under the following conditions:

1) Any new introduction of pollutants into the facility from an indirect discharger which would be subject to section 301 or 306 of the CWA if it were directly discharging those pollutants;

2) Any substantial change in the volume or character of pollutants being introduced into that facility by a source introducing pollutants into the facility at the time of issuance of the permit; and

3) For the purpose of this section, adequate notice must include information on:

   a) The quality and quantity of effluent introduced into the treatment works; and
   b) Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the facility.

COMMENT 9:

Milowe & Janice Jungjohann comment that with 6,000 acres to choose from, why the Applicant did not choose an area with no homes.

RESPONSE 9:

TCEQ rules do not allow the ED to determine or mandate a different facility location, different discharge location, alternative means of conveyance and disposal, or different type of wastewater treatment plant than what is proposed by an applicant if the proposed facility complies with the applicable rules and statutes. The ED evaluates the outfalls in the locations proposed by an applicant and determines what effluent limitations are appropriate and whether water quality standards will be maintained. If the Applicant were to request changing the location of the facility, the ED would review the new proposal using the same standards as used to evaluate the proposed location and outfall.

COMMENT 10:

James and Kathy Bates ask if the facility is required to have personnel at the site 24-hours per day.

RESPONSE 10:

The draft permit requires the Applicant to 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.

A maximum discharge of 500,000 gpd makes this a Category C facility. A 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.

COMMENT 11:

James and Kathy Bates ask if the fossil shells, shown in Exhibits 2A and 2B of the permit application have any significance in protecting water quality in Terry Creek.

RESPONSE 11:

If the pH of the treated effluent is maintained within permitted limits and not allowed to become excessively acidic, the fossils will remain and not be dissolved. As far as their significance in protecting water quality in Terry Creek, the Standard Implementation Team does use fish and benthic macroinvertebrates (aquatic bugs) in assessment of water bodies to determine proper aquatic life uses of certain water bodies. While fossilized aquatic creatures have geologic significance, they do not play a role in determining the proper aquatic life uses for streams receiving treated effluent.

COMMENT 12:

James and Kathy Bates ask what provisions are in place in case of an emergency discharge at the facility. They also ask to whom such discharges will be reported, the developer's accountability for such discharges, and what the expectations are that emergency discharges may occur.

RESPONSE 12:

There is no expectation that emergency discharges will occur at the proposed facility. However, if such an emergency discharge were to occur, the draft permit requires the Applicant to 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. Depending upon the actual cause of such emergency discharges, the Applicant would be subject to enforcement actions by TCEQ.

The Applicant is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, Operational Requirement No. 4 (page 10) in the draft permit states that 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. In addition, the plans and specifications for this wastewater treatment plant must be approved by TCEQ. Also, see the second to last paragraph of Response #1 for additional permit requirements that address this comment.

COMMENT 13:

James & Kathy Bates, Andres & Rhonda Benavidez, Andres & Agripina Benavidez, Jack Herring and Steve & Nelda Timmons have concerns regarding flooding during heavy rains.

RESPONSE 13:

TCEQ does not address flooding issues in the wastewater permitting process. However, if a facility is located in the 100-year flood plain, the Applicant will be required to comply with the requirements of 30 TAC § 309.13(a). 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. 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 14:

Milowe and Janice Jungjohann ask if the facility builds up the proposed plant's site with soil would the Applicant also build up their property.

RESPONSE 14:

If the Applicant chose to protect the facility from flooding during storm events through raising their property by building up the soils, there are no TCEQ requirements that would require them to build up nearby properties. However, 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 15:

Comments were also received regarding the following topics:

1) The effect the proposed facility may have on property values;
2) The facility would impact quality of life issues; and
3) The potential noise from machinery at the proposed facility.

RESPONSE 15:

Although the Texas Legislature has given the TCEQ the responsibility to protect water quality, TCEQ does not address these types of 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 ED cannot consider property values, quality of life, and noise issues 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.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

No changes were made in response to comment, but the maximum discharge allowed in the draft permit was reduced from 1.5 mgd to 500,000 gpd since the end of the public comment period.

Respectfully submitted,

Texas Commission on Environmental Quality
Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By _____
Robert D. Brush, Staff Attorney
Environmental Law Division
State Bar No. 00788772
Representing the EXECUTIVE DIRECTOR of the
Texas Commission on Environmental Quality

CERTIFICATE OF SERVICE

I certify that on May 29, 2009 the "Executive Director's Response to Public Comments" for Permit No.WQ0014803001 was filed with the Texas Commission on Environmental Quality's Office of Chief Clerk.

Robert D. Brush, Staff Attorney
Environmental Law Division
State Bar No. 00788772

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 MAY 29 PM 1:59
CHIEF CLERKS OFFICE