

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 9, 2009

TO: Persons on the attached mailing list.

RE: Southern Horizons, L.P.  
TPDES Permit No. WQ0014922001

### **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 R.B. Tullis Branch Library, 21569 U.S. Highway 59, New Caney, Texas 77357.

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

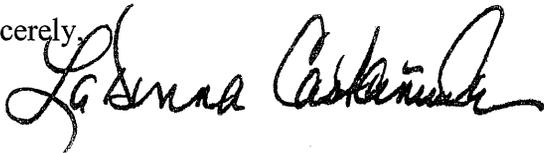
## **Processing of Requests.**

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/er

Enclosures

MAILING LIST  
for  
Southern Horizons, L.P.  
TPDES Permit No. WQ0014922001

FOR THE APPLICANT:

Steve Sullivan  
Southern Horizons, L.P.  
12793 Highway 59  
Splendora, Texas 77372

Rafael Servantes, E.I.T.  
Bleyl & Associates  
100 Nugent Street  
Conroe, Texas 77301

PROTESTANTS/INTERESTED PERSONS:

Lewis A. Haraway  
P.O. Box 1207  
Splendora, Texas 77372-1207

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

David Akoma, 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



Branch Library, 21569 US HWY 59, New Caney, Texas 77357 since publication of the Notice of Receipt of Application and Intent to Obtain Water Quality Permit (NORI). The 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 Notice of Application and Preliminary Decision (NAPD).

## **BACKGROUND**

### Description of Facility

The Applicant applied to TCEQ for a new TPDES permit that would authorize the Applicant to discharge treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day (gpd). The proposed facility is planned to serve Lakes of Southern Crossing Subdivision in eastern Montgomery County, Texas. The treated effluent will be discharged to Cow Branch; then to East Fork San Jacinto River in Segment No. 1003 of the San Jacinto River Basin. The unclassified receiving water use is no significant aquatic life use for Cow Branch. The designated uses and dissolved oxygen criterion as stated in Appendix A of the Texas Surface Water Quality Standards (30 TAC § 307.10) for Segment No. 1008 are high aquatic life uses, public water supply, and contact recreation. The facility will be located approximately 3,300 linear feet south-east of the intersection of Highway 59 and King Port Drive in Montgomery County, Texas.

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 should not be impaired by this permit action. Numerical and narrative criteria to protect existing uses should be maintained. This review preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed. Therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and 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 August 15, 2008, and declared administratively complete on October 17, 2008. The Notice of Receipt of Application and Intent to Obtain Water Quality Permit was published in the *Conroe Courier* on November 14, 2008. The Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater was published 2009 in the *Conroe Courier* on March 6, 2009. The public comment period ended on April 6, 2009. This application is subject to the procedural requirements adopted pursuant to House Bill 801 (76<sup>th</sup> Legislature, 1999).

## COMMENTS AND RESPONSES

### COMMENT 1:

Mr. Haraway is concerned about the potential for damage to his property if there are inadvertent discharges of untreated wastewater.

### RESPONSE 1:

The Applicant is required to take appropriate measures to minimize the possibility of an accidental discharge of untreated wastewater. For example, Operational Requirement #1 in the draft permit states that the Applicant must ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained at all times. Under the draft permit, the Applicant is responsible for installing 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.

TCEQ regulations require that domestic wastewater treatment plants be operated and maintained by operators holding a valid certificate of competency at the required level as defined in 30 TAC § 30.350(e). The proposed facility must be operated by a chief operator holding a Category C 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.

Acceptance of the permit by the Applicant constitutes acknowledgement and agreement that the Applicant will comply with all the terms and conditions of the permit, in addition to the rules and other orders of the Commission. In accordance with 30 TAC § 305.125(9), any noncompliance that may endanger human health or safety, or the environment must be reported by the Applicant to the Houston Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information must also be provided by the Applicant to the Houston Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance.

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 toll free at 1-888-777-3186 or the TCEQ Houston Regional Office at 713-767-3500. Complaints can also be reported by email by sending them to [complaint@TCEQ.state.tx.us](mailto: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 enforcement action by the Commission.

**COMMENT 2:**

Mr. Haraway is concerned that the location and operation of the facility will negatively impact the use of his property and the value of his property.

**RESPONSE 2:**

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 these 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.

**COMMENT 3:**

Mr. Haraway is concerned with flooding and erosion that may occur on his property if the Applicant is allowed to discharge 120,000 gpd into Cow Branch.

**RESPONSE 3:**

TCEQ does not address flooding issues in the wastewater permitting process, unless such flooding would raise water quality concerns. 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.

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

Respectfully submitted,

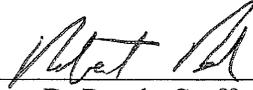
Texas Commission on Environmental  
Quality  
Mark R. Vickery, P.G.  
Executive Director

Robert Martinez, Director  
Environmental Law Division

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 June 4, 2009 the "Executive Director's Response to Public Comments" for Permit No. WQ0014922001 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

CHIEF CLERKS OFFICE

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COMMISSION  
ON ENVIRONMENTAL  
QUALITY