PROPOSED NEW TCEQ PERMIT NO. WQ0004868000

APPLICATION BY	§	**BEFORE THE**
	§	
THE CITY OF VERNON	§	**TEXAS COMMISSION ON**
	§	
	§	**ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment on the application by the City of Vernon (Applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004868000 and the Executive Director's preliminary decision on the application. As required by Title 30 of the Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The TCEQ's Office of the Chief Clerk received timely comment letters from Jose and Gloria Cardenas, Andy Brumley, Lon Byars, Luis and Mary Rangel, T. Shane Castleberry, Toby Castleberry, Terry Weaver, Ken and Lisa Aderholt, Lee Castleberry, Mary Castleberry, Malcolm Borger and Buffy Borger, Jay H. Pierce, James and Carolyn Koontz, Dane Mount, Ismael and Mary Ann Cortez, Elton and Edna Zoch, Tommy and Tricia Alaniz, and Kurt Lemon. Additionally, Andy Brumley, Jose Cardenas, Elton Zoch, Rusty Riddle, Ismael Cortez, Tommy Weaver, Shane Castleberry, Rudy Cardona and Mike Herchman provided formal comments at the August 31, 2009 public meeting. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The City of Vernon has applied to the TCEQ for a new TPDES permit that would authorize the discharge of ion exchange water treatment system wastes at a daily average flow not to exceed 46,000 gallons per day via Outfall 001. The City of Vernon operates the Ion Exchange Wastewater Treatment Plant to remove nitrates from a side stream and from on-site ground storage tanks to produce potable water. Wastewater from the regeneration nitrate removal resins and softening resins are combined in a wastewater holding tank and discharged via Outfall 001. Domestic wastewater is routed to the City of Vernon Wastewater Treatment Plant, TPDES Permit No. WQ0001377001, for treatment and discharge.

The facility is located at 2801 Sullivan Street, approximately one mile east of the intersection of U.S. Highway 70 and U.S. Highway 287 in Wilbarger County, Texas. The effluent is discharged via pipeline directly to the Pease River in Segment No. 0230 of the Red River Basin. The designated uses for Segment No. 0230 are intermediate aquatic life use and contact recreation. In accordance with 30 TAC Section 307.5 and the TCEQ Implementation Procedures (January 2003) for the Texas Surface Water Quality Standards (TSWQS), an antidegradation review of the receiving waters must be 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 the Pease River, which has been identified as having intermediate 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 permit application was received on October 9, 2008, and declared administratively complete on October 27, 2008. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on November 13, 2008, in *The Vernon Daily Record.* The Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) was published on May 21, 2009, in *The Vernon Daily Record.* Notice of a Public Meeting on an Application for a Water Quality TPDES Permit for Industrial Wastewater (Notice of a Public Meeting) was published on July 29, 2009 in *The Vernon Daily Record.* The public meeting was held on August 31, 2009 in Vernon, Texas. The public comment period closed on August 31, 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: Some commenters stated that they would prefer a different alternative for dealing with the wastewater from the facility. **Andy Brumley** said he would prefer it if the water was discharged into an underground injection well or if the water was completely cleaned up before it was discharged. **Jose Cardenas** said that he wants the City of Vernon to look at other options, such as building a lake, buying more water rights and blending the water to dilute the nitrate concentration, discharging the water to a nearby abandoned oil/gas well, or correcting the design of the original water processing plant. **Rusty Riddle** stated that he believed the plan to discharge wastewater into the river should be rethought.

RESPONSE 1: The permit application review for a TPDES permit is limited to the wastewater treatment and/or disposal operations proposed by the applicant in their permit application. Texas Water Code Section 26.121 authorizes discharges into water in the state, provided the discharger obtains a permit from the Commission. The TCEQ reviews permit applications to determine if the proposed discharge will violate the Texas Surface Water Quality Standards (TSWQS), codified in 30 TAC Chapter 307. TCEQ does not have the authority to mandate a different

discharge location, alternative technology, alternative disposal methods, or different type of wastewater treatment plant if the proposed discharge complies with the TSWQS. TCEQ evaluates applications for wastewater treatment plants based on the information provided in the application and the discharge location proposed by the applicant and then fashions a draft permit protective of human health, safety, the environment, and the receiving waterbody's existing uses. TCEQ also evaluates the treatment type and disposal method proposed in the application to determine whether the proposed facility can meet the criteria and limitations in the draft permit.

COMMENT 2: **Elton Zoch** and **Jose Cardenas** requested that an Environmental Impact Study be performed.

RESPONSE 2: The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, federal agencies must prepare detailed statements known as Environmental Impact Statements (EISs). The Executive Director's staff have thoroughly reviewed this application and prepared a draft permit that complies with federal and state regulations developed to protect the environment. Since the issuance of this permit is a state action, not a federal action, an EIS is not required.

COMMENT 3: **Jose Cardenas** asked about TCEQ's mission statement and purpose.

RESPONSE 3: TCEQ's mission statement is as follows:

The "Texas Commission on Environmental Quality strives to protect our state's human and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste." To accomplish this mission, TCEQ will:

- base decisions on the law, common sense, good science, and fiscal responsibility;
- ensure that regulations are necessary, effective, and current;
- apply regulations clearly and consistently;
- ensure consistent, just, and timely enforcement when environmental laws are violated;
- ensure meaningful public participation in the decision-making process;
- promote and foster voluntary compliance with environmental laws and provide flexibility in achieving environmental goals; and
- hire, develop, and retain a high-quality, diverse workforce.

See www.tceq.state.tx.us/about. The mission statement is consistent with the TCEQ's general policy under the Texas Surface Water Quality Standards:

> It is the policy of this state and the purpose of this chapter to maintain the quality of water in the state consistent with public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state; to encourage and promote development and

> use of regional and areawide wastewater collection, treatment, and disposal systems to serve the wastewater disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

See 30 TAC § 307.1 and Tex. Water Code § 26.003.

COMMENT 4: **Jose Cardenas** commented on the adequacy of the permit application. Mr. Cardenas stated that the application provided to TCEQ is incomplete because it fails to list all the components that would be contained in the proposed wastewater discharge. Mr. Cardenas also said that the application states that "sodium chloride (salt) is not applicable when in fact, it is the primary material used in both regenerating cycles of the ion exchange process, and millions of pounds will be discharged on an annual basis." According to Mr. Cardenas, the application contains inconsistent information. Mr. Cardenas also said that some of the information in the application is incomplete, such as the list of landowners within a five mile radius, which Mr. Cardenas said did not list all of the people meeting this description. Mr. Cardenas further stated that the application did not provide the information necessary for TCEQ to make an intelligent decision about whether to grant this permit and asked that the Executive Director's preliminary decision be rescinded. Mr. Cardenas expressed the belief that there is not sufficient information present in the application to show that the proposed discharges will satisfy Texas Surface Water Quality Standards and policies. Mr. Cardenas feels that the City of Vernon failed to complete the Administrative Report, Technical Report 1.0, and Worksheets 2.0 and 4.0 and thereby failed to provide the technical basis on potential impacts on the receiving waters to enable the staff to come to any conclusion with respect to compliance with state surface water quality standards and policies.

RESPONSE 4: The applicant for a wastewater discharge permit is required to include the following information in the permit application:

> a topographic map, ownership map, county highway map, or a map prepared by a Texas licensed professional engineer, Texas licensed professional geoscientist, or a registered surveyor which shows the facility and each of its intake and discharge structures and any other structure or location regarding the regulated facility and associated activities. Maps must be of material suitable for a permanent record, and shall be on sheets 8-1/2 inches by 14 inches or folded to that size, and shall be on a scale of not less than one inch equals one mile. *The map shall depict the approximate boundaries of the tract of land owned or to be used by the applicant and shall extend at least one mile beyond the tract boundaries . . .*

30 TAC § 305.45(a)(6), emphasis added.

> If the application is for the disposal of any waste into or adjacent to a watercourse, the application shall show the ownership of the tracts of land adjacent to the treatment facility and *for a reasonable distance along the watercourse from the proposed point of discharge.* The applicant shall list on a map, or in a separate sheet attached to a map, the names and addresses of the owners of such tracts of

land as can be determined from the current county tax rolls or other reliable sources. The application shall state the source of the information.

30 TAC § 305.48(a)(2), emphasis added. Neither the rules nor the statutes require the applicant to provide a list of landowners within five mile radius from the point of discharge.

TCEQ staff reviewed the application and concluded that all the information required in the application was submitted. Please see responses to Comments 8 and 9 for further discussion of the application review process.

COMMENT 5: **Jose Cardenas** stated that the City of Vernon is a Significant Industrial User with a new discharge in excess of 25,000 GPD, and thus is subject to regulation under U.S. Environmental Protection Agency (EPA) rules, codified in Title 40 of the Code of Federal Regulations (CFR), Sections 400 - 471.

RESPONSE 5: The EPA rules referenced by Mr. Cardenas, 40 CFR Sections 400-471, are national standards that are developed by the EPA on an industry-by-industry basis. The proposed permit is for an ion exchange water treatment plant. EPA has not developed standards for this type of industrial activity, and thus this project is not subject to regulation under 40 CFR Sections 400-471.

COMMENT 6: Some commenters expressed concern about the potential impact of the discharge on groundwater and wells in the area. **Andy Brumley** stated that he believed that the discharge from the treatment plant had already harmed the ground water quality in the past and that the proposed discharge would continue to harm water quality. Mr. Brumley was specifically concerned with impacts to groundwater on his property. Mr. Brumley explained that in 1999, water on his property rated below a 5 on an electrical conductivity (EC) test and that water from the same wells now rates around 11 on the EC meter and that the water is corrosive. **Jose and Gloria Cardenas** stated that their drinking water comes from shallow wells on their property and expressed the belief that these wells would become contaminated by the proposed discharge. **Elton Zoch** expressed concern that the red bed in the channel contains porous sand and that the wastewater will seep through the ground into the groundwater.

RESPONSE 6: The proposed discharge is located over the Seymour aquifer, which is designated as a major aquifer by the Texas Water Development Board (TWDB). Local groundwater is produced from the Seymour aquifer and younger alluvial sediments deposited by the Pease River, the Red River, and associated creeks. According to published report 240 by the TWDB, the groundwater produced from the Seymour aquifer and the younger alluvium is connected.

Water well drillers' reports were reviewed by the Water Quality Assessment Team geologist for wells in the vicinity of the proposed discharge point. Local water wells are shallow (14 to 64 feet deep), with water levels ranging from 2.7 to 49.5 feet below ground level. Groundwater produced in the shallow alluvial sediments near Pease River would generally be expected to be in communication with the river. Mr. Cardenas' comment that the water levels in nearby wells correspond with the level of the Pease River supports the conclusion that there is likely

hydrologic communication between the river and the shallow alluvial groundwater system. However, the Water Quality Division has determined that the draft permit is in accordance with the Texas Surface Water Quality Standards, which ensure that the effluent discharge is protective of aquatic life, human health, and the environment. The review process for surface water quality is conducted by the Standards Implementation Team and Water Quality Assessment Team surface water modelers. The Water Quality Division has determined that if the surface water quality is protected, then the groundwater quality in the vicinity should likewise be protected.

Pursuant to the Texas Surface Water Quality Standards, 30 TAC Chapter 307, the Pease River is not designated as a public water supply. Thus, screening against the Calculated Water Quality-Based Effluent Limitations for the protection of drinking water supply is not applicable to the analysis of an application for a permit to discharge wastewater to the Pease River. However, as a result of this comment, water quality based effluent limitations were calculated for Nitrate-Nitrogen based on the consumption of public water supply in the Pease River and screened against the analytical data in the application for Nitrate-Nitrogen. According to the calculated values, a daily average of 142.366 mg/L Nitrate-Nitrogen is protective for public water supply in the Pease River. The analytical data submitted with the application reported a value of 20 mg/L Nitrate-Nitrogen. The analytical data for Nitrate-Nitrogen was compared to the calculated water quality-based effluent limitations for the protection of human health. Effluent data was compared against the 70% and 85% thresholds to determine if monitoring and/or effluent limits were necessary, and it was determined that the data provided did not indicate that the discharge would have the potential to cause the water in the Pease River to exceed the human health criteria. The draft permit does, however, contain monitoring and reporting requirements for Nitrate-Nitrogen to gather further information on effluent quality.

With respect to Mr. Brumley's concerns that there might be past or ongoing contamination of groundwater, TCEQ conducts periodic inspections of wastewater facilities and also conducts investigations based on complaints received from the public. To the extent there is a suspicion of violation of TCEQ rules, citizens are encouraged to report such violations to the agency. To report complaints about this or any other facility, please contact the Abilene Regional Office at (325) 698-9674, or call the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. Citizen complaints may also be filed on-line at www.tceq.state.tx.us/compliance/complaints/ index.html. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with the terms and conditions of its permit, it will be subject to investigation and possible enforcement action.

COMMENT 7: **Jose Cardenas** expressed concern about the concentration of nitrates that could be discharged pursuant to this permit. Mr. Cardenas noted that per EPA and TCEQ, nitrates in excess of 10 mg/L do not meet the standards for human consumption, and stated that "[t]he proposed discharge of 46,000 gallons per day into the Pease River will consist of highly concentrated Nitrates/Nitrites which by simple arithmetic can be shown to be far in excess of levels proven toxic to humans in the past." He asked what level of nitrates/nitrites would be present in the proposed discharge.

RESPONSE 7: The standard drinking water concentration limitations for nitrates are more stringent than the limitations for surface water. As was noted in the previous response, the Pease

River is not designated as a public water supply, and thus, screening against the Calculated Water Quality-Based Effluent Limitations for the protection of drinking water supply is not applicable for analysis of application for permits seeking to discharge wastewater to the Pease River. As was also noted in the previous response, the analytical data submitted with the application reported a value of 20 mg/L Nitrate-Nitrogen.

COMMENT 8: Some commenters expressed concern about the flow rate of the receiving water, the effect of the wastewater on the receiving waterbody, and the data, modeling and calculations used to determine that this permit would be protective of the environment, safety, and the waterbody's existing uses. **Rudy Cardona** provided the following written comment: "Please do not contaminate our water system." **Elton Zoch** noted that during the summer, there is often no flow. Mr. Zoch also stated that reduced water flow sometimes results in, "a stinking green mess in the river," and that he is afraid that discharge of nitrates would aggravate the problem. **Rusty Riddle** noted that when it gets dry, the concentration of the constituents in discharge will be increased. **Shane Castleberry** wanted information about what data was used, the computer modeling used, and how the decision was made that the draft permit was "okay." **Andy Brumley** noted that the formula for determining wastewater discharge into a public stream includes the average volume of water in that stream for the purpose of calculating dilution and stated that the Pease River has had less water passing through it to dilute discharged wastewater in the past ten years. **Jose and Gloria Cardenas** expressed concern about "the rate of absorption of this toxic waste into out sandy, river bottom soil...because [they] have been leaching out the excess brine out of [their] soil by installing underground drain lines that run throughout [their] pastures and into a collection sump." Jose and Gloria Cardenas also represented that the Pease River normally dries up in times of drought, and that it went dry for approximately ten days this spring and was dry for more than three weeks last year.

RESPONSE 8: The City of Vernon is applying for a permit to discharge wastewater resulting from operation of an ion exchange water treatment process which removes nitrates from a side stream and blends it with on-site ground storage tanks to produce drinking water to meet the state drinking water standards. The proposed facility is for a water treatment plant. Odor is not typically a concern from this type of discharge. The City of Vernon previously sent this wastewater to the City of Vernon Wastewater Treatment Plant (TPDES Permit No. WQ00010377001) for treatment and discharge. The proposed discharge consists of the wastewater that contains the impurities that were removed from the water source to produce the drinking water. In accordance with Chapter 26 of the Texas Water Code, a proposed discharger must obtain authorization from TCEQ to discharge wastewater into water in the state. On October 27, 2008, TCEQ received an industrial wastewater application from the City of Vernon.

When the TCEQ receives a permit application, staff reviews the application to determine whether the applicant has submitted all of the required parts of the application. This process is called administrative review. If all parts have been submitted, the application is determined to be administratively complete. After the application has been determined to be administratively complete, staff reviews it to determine whether it satisfies state and federal regulatory requirements. This process is called the technical review.

The technical review begins in the Water Quality Standards and Assessment (WQSA) section. The WQSA section makes recommendations that are used to help prepare the draft permit. They make determinations about: the designated uses for the segment of the water body that is receiving the proposed discharge, the critical conditions for the water body, meaning the conditions when a water body is most susceptible to adverse effects (such as when water flow rates are low), the effluent limitations needed to ensure the dissolved oxygen criteria for the water body are maintained, and the whole-effluent toxicity testing requirements. Once the WQSA section's review is completed, the permit application is assigned to a permit writer. The permit writer reviews the information about the facility and the proposed discharge and develops technology-based effluent limitations based on federal effluent guidelines. Using the permit application and recommendations from the WQSA section, the permit writer develops water quality-based effluent limitations. The permit writer then compares the technology-based limitations with the water quality-based effluent limitations and applies the more protective limits in the draft permit.

The draft permit was developed in accordance with 30 TAC Chapter 307 and "Procedures to Implement the Texas Surface Water Quality Standards," January 2003 (Implementation Procedures) and is designed to be protective of aquatic and terrestrial life and human health. The draft permit would authorize discharge directly to the Pease River in Segment No. 0230 of the Red River Basin. The Pease River is a classified segment. Classified segments, also referred to as designated segments, refer to water bodies that have designated site-specific uses. In this case, the designated uses for Segment No. 0230 are intermediate aquatic life use and contact recreation. Classified segments are also protected by related site-specific numerical and narrative criteria. Numerical criteria are limits on the amount of a particular pollutant that a water body may contain. Narrative criteria are prohibitions on certain conditions in the waterbody, such as color, odor or excessive turbidity.

In order to meet the numerical and narrative criteria for this site, the TCEQ staff calculates effluent concentration limits for specific parameters, as appropriate. For example, they may set limits for chlorides, sulfates, total dissolved solids, dissolved oxygen, pH, indicator bacteria, and temperature. In order to set limits that will be protective even during critical mixing conditions, such as periods of low flow, these limits are calculated by looking at "the lowest average stream flow for seven consecutive days without a recurrence interval of two years, as statistically determined from historic data." This flow rate is also referred to as the seven-day, two-year low flow, or 7Q2. This effluent fraction, when expressed as a percentage, is also referred to as the critical dilution.

The 7Q2 for the Pease River was derived from data from an upstream discharger. The 7Q2 for the Pease River is 0.28 cubic feet per second. The proposed discharge of 0.046 million gallons per day makes up only 20.27 percent of the 7Q2 of the Pease River. Given the relative size of the discharge compared to the 7Q2 of the Pease River, the TCEQ does not expect the proposed discharge to have a significant adverse impact on the Pease River. The 7Q2 was used to calculate the water quality based effluent limitations derived in Appendix A of the Statement of Basis/Technical Summary. The applicant submitted analytical data with the industrial wastewater application which was based on data submitted with the 2005 renewal application for TPDES Permit No. WQ00010377001. The analytical data was compared to the Calculated

Water Quality Based Effluent Limitations (Appendix A of the Statement of Basis/Technical Summary), and it was determined that the data did not support a conclusion that the discharge would have the potential to cause the receiving water to exceed the applicable water quality criteria.

In addition, the applicant stated that the analytical data for total dissolved solids, chlorides, and sulfates provided in the application were based on previous operating data from the potable water treatment plant. The total dissolved solids, chlorides and sulfate were screened in accordance with the Implementation Procedures and the TSWQS to determine if effluent limitations were necessary for the protection of water quality. Based on the analysis of the data provided, it was determined that the proposed discharge did not have the potential to cause the receiving waters to exceed the water quality criteria.

In accordance with 40 CFR Section 122.21(h)(4)(K)(iii) and TCEQ standard practices, if the applicant is a new discharger, the applicant must complete and submit analytical data after their initial discharge. Since the City of Vernon is a new discharger, the draft permit requires that the initial discharge be sampled and analyzed for a series of pollutants to be screened against the concentrations necessary to protect the water quality criteria. If the permit is issued, the effluent data will be compared against the permit limits derived in Appendix A of the Statement of Basis/Technical Summary. If the effluent data shows pollutants that have the potential to exceed the water quality criteria, the permit will be re-opened and additional monitoring, effluent limits, and/or other controls may be added to the permit.

COMMENT 9: **Jose Cardenas** is concerned with safety and recreational uses. **Jose Cardenas and Gloria Cardenas** stated that their cows will be affected by the proposed discharge since the cows drink out of the Pease River. They are also concerned with the possibility that the discharge may increase the incidence of Methemoglobinemia, aborted fetuses, still born, brain damaged calves, destroyed micro-organisms in cattle rumens, and may have deleterious effects on milk production. **Elton Zoch** expressed concern that the proposed discharge could kill cattle and wildlife. **Jose and Gloria Cardenas, Andy Brumley, Lon Byars, Luis and Mary Rangel, T. Shane Castleberry, Toby Castleberry, Terry Weaver, Ken and Lisa Aderholt, Lee Castleberry, Mary Castleberry, Malcolm Borger and Buffy Borger, Jay H. Pierce, James and Carolyn Koontz, Dane Mount, Ismael and Mary Ann Cortez, Elton and Edna Zoch and Tommy and Tricia Alaniz** feel that the proposed discharge permit action will create a negative safety and health situation. **Ismael Cortez** believes the proposed discharge is going to affect a lot of people negatively. Mr. Cortez is concerned with the recreational use of the Red River. **Rusty Riddle** was concerned about impacts of water flowing all the way down to the Texoma Lake. **Mike Herchman** asked, "What would Wichita County to the east say if we ran a pipeline to their county line and dumped this water on them?"

RESPONSE 9: The proposed draft permit was developed in accordance with the applicable Texas Surface Water Quality Standards (TSWQS). These standards are designed to maintain the quality of water in the state to be protective of human health, terrestrial wildlife, livestock, domestic animals, and aquatic life along the discharge route. As part of the permitting process, the Executive Director must determine the uses of the waters receiving the discharge, and based upon those determinations, set appropriate effluent limits. In this case, the discharge route is via

pipeline directly to the Pease River in Segment No. 0230 of the Red River Basin. The designated uses of Segment 0230, according to Appendix A of the TSWQS (30 TAC §§ 307.4(h)(2) & 307.10), are contact recreation and intermediate aquatic life use. These designated uses and the associated criteria contained in Appendix A of the TSWQS for Segment 0230 of the Red River Basin were used to evaluate this permit application.

The draft permit has been designed to protect human health resulting from contact recreation and consumption of aquatic organisms. It has also been designed to preclude adverse toxic effects on aquatic life, terrestrial wildlife, livestock, or domestic animals resulting from contact recreation, or consumption of aquatic organisms. The state drinking water standard for humans for nitrate is 10 mg/L. However, no nitrate standard exists for surface water or consumption by livestock. Review of current literature indicates that nitrate levels as high as 10 times the state drinking water standard may be considered safe for livestock. The criterion for Segment 0230 for contact recreation is 126 colony forming units (CFUs) *E. coli* bacteria per 100 ml. The criterion for intermediate aquatic life use is 4.0 mg/L dissolved oxygen.

Pursuant to 30 TAC § 307.5 and the TCEQ Implementation Procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving water 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 a lowering of water quality by more than a de minimis extent is not expected in the Pease River, which has been identified as having intermediate aquatic life use. The effluent limits and/or monitoring requirements in the draft permit are set to maintain and protect the existing instream uses. The draft permit requires that effluent monitoring samples be taken at the discharge pipeline immediately downstream of the discharge flow meter prior to entering the Pease River. The minimum self-monitoring requirements contained in the draft permit are listed below:

		Report Daily Average and Daily Maximum	
Outfall Number	Pollutant	Measurement Frequency	Sample Type
001	Flow (MGD)	1/day	Estimate
	Chemical Oxygen Demand	1/month	Grab
	Nitrate Nitrogen	1/month	Grab
	Total Dissolved Solids	1/month	Grab
	Chloride	1/month	Grab
	Sulfates	1/month	Grab
	pH	1/day	Grab

The TCEQ conducts routine inspections of facilities to ensure the facility complies with their authorizations and that all authorizations are obtained properly. Any observance or complaints about discharges from this facility can be reported for investigation to the TCEQ Region 3 Office in Abilene at 325-698-9674, or by using the statewide toll-free number at 1-888-777-3186. Citizen complaints may also be filed on-line at http://www.tceq.state.tx.us/cgi-bin/enforcement/complaints. If the facility is found to be out of compliance with the terms or conditions of its permit or with TCEQ regulations, it may be subject to enforcement.

COMMENT 10: **Jose Cardenas** stated that he was told that the City of Vernon was told that it cannot withdraw its permit application and asked that TCEQ give the community time to try to get the right thing done.

RESPONSE 10: The City of Vernon's application has been processed according to the standard TCEQ procedures for processing applications for wastewater discharge and according to all applicable rules and requirements. The applicant may withdraw its permit application at any time during the permit application process before the permit is issued.

COMMENT 11: **Jose Cardenas** is concerned with the pollutant analysis that was submitted with the application. He states that there are over 35 different undesirable parameters, including PCBs, which cause cancer.

RESPONSE 11: Worksheet 2.0 is part of the Industrial Wastewater Application. The Worksheet contains a series of analytical tables that may need to be completed in order for the application to be technically complete. The analytical data submitted with the application (analytical data from 2005 renewal application for TPDES WQ00010377001) was compared to the calculated water quality-based effluent limitations for the protection of aquatic life and human health in Appendix A of the Statement of Basis/Technical Summary. Effluent characteristic data were compared against the 70% and 85% thresholds to determine if monitoring and/or effluent limits were necessary and it was determined that the data did not indicate that the proposed discharge would have the potential to cause the receiving waters to exceed the water quality criteria.

In addition, based on 40 CFR § 122.21(h)(4)(K)(iii) and TCEQ standard practice, if the applicant is a new discharger, the applicant must complete and submit analytical data after their first discharge. The proposed permit requires that the initial discharge be sampled and analyzed for a series of pollutants to be screened against the concentrations necessary to protect the water quality criteria. If the permit is issued, the effluent data will be compared against the permit limits derived in Appendix A of the Statement of Basis/Technical Summary. If the effluent data shows pollutants that have the potential to exceed the water quality criteria, the permit will be re-opened and additional monitoring, effluent limits, and/or other controls may be added to the permit.

COMMENT 12: **Jose Cardenas** stated that TCEQ has made the preliminary decision to issue a permit to the City of Vernon to discharge pollutants to the Pease River and asked TCEQ to rescind its preliminary decision. **Ismael Cortez** said that he hopes the application is not approved.

RESPONSE 12: The Executive Director may amend or supplement the preliminary decision on a permit application in response to public comment. However, the comments provided during the public comment period for this application do not warrant the rescission of the preliminary decision in this case. Mr. Cardenas, Mr. Cortez, and anyone affected by this permit action will have an opportunity to file a motion to overturn the Executive Director's decision if he determines to issue this permit. Any person, group or entity affected by this permit action may

also request a contested case hearing by filing such request with the TCEQ's Office of the Chief Clerk within the time allowed. The Executive Director's final decision and a copy of this response to comment will be mailed to everyone who provided comment and those on the Chief Clerk's mailing list for this application. The cover letter accompanying the final decision will provide instructions for requesting a contested case hearing or reconsideration of the Executive Director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. Following the close of all applicable comment and request periods, if a request for contested case hearing is received, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Contested case hearings are evaluated under Chapter 55 of the Commission rules, 30 TAC Chapter 55. The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn. Only "affected person(s)" may request a contested case hearing under 30 TAC Chapter 55. The Executive Director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the Executive Director will not issue a final approval of the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

COMMENT 13: **Jose Cardenas** asked for the recharge rate of the alluvial aquifer.

RESPONSE 13: The recharge rate is defined as the quantity of water that enters an aquifer during a length of time. The Texas Water Development Board (TWDB) has estimated that during one year, 10.2% of the annual rainfall recharged the Seymour aquifer in Wilbarger County. This would represent (for an average annual rainfall year) that 2.55 inches/year (per a unit area) of water recharges the aquifer. It should be noted that this recharge rate is estimated for the Seymour aquifer. No published estimates are available for the alluvial aquifer immediately adjacent to the Pease River. However, the Seymour aquifer is an alluvial aquifer system, so a broad assumption could be made that the recharge rates could be similar.

COMMENT 14: **Jose Cardenas** expressed concern over potential financial losses of individuals downstream of the discharge point and asked what plans had been formulated to compensate such individuals for these losses.

RESPONSE 14: The permitting process controls the discharge of pollutants into or adjacent to water in the state and protects the water quality of the state's rivers, lakes, and coastal waters. TCEQ does not have statutory or regulatory authority to address property values or other financial losses in the wastewater permitting process. However, the permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effect on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

COMMENT 15: **Jose Cardenas** expressed the belief that the differences between Burkburnett's water system and the City of Vernon's should be taken into consideration.

RESPONSE 15: TPDES permit applications are considered on a case-by-case basis. Effluent discharged into water in the state from facilities regulated under the TPDES program is required to meet the Texas Surface Water Quality Standards (TSWQS). The TSWQS and other applicable rules are designed to be protective of aquatic life, human health, and the environment, including the designated uses of the receiving waters. The Executive Director has determined that the draft permit meets the requirements of the TSWQS.

COMMENT 16: Some commenters requested testing of area waters. **Andy Brumley** asked for further testing by TCEQ or EPA or both on the underground water streams, both up river and down, before the permit is granted. **Jose Cardenas** stated that TCEQ "[has] not tested the proposed discharge and yet... [is] issuing a permit" and saying that proposed discharge, "will have no effect on the current uses of the river, either on wildlife or aquatic life or on the current use of contact recreation on the river." **Tommy Weaver** stated that he felt that local residents should sample their water wells and test the water where it flows into to the river so that if water quality changes over time, they will have data to show what has changed.

RESPONSE 16: Effluent discharged into water in the state from facilities regulated under the TPDES program is required to meet the Texas Surface Water Quality Standards (TSWQS). The TSWQS and other applicable rules are designed to be protective of aquatic life, human health, and the environment, including the designated uses of the receiving waters. The Executive Director has determined that the draft permit meets the requirements of the TSWQS.

The TCEQ encourages private water well owners to regularly test their well water to look for groundwater contamination or groundwater quality changes that they may want to explore further. Environmental Protection Agency has developed a handbook called *Drinking Water from Household Wells* that may be a useful reference for how to care for your water well and what contaminants may be sampled in the groundwater. An online version of this document can be found at: http://www.epa.gov/safewater/privatewells/pdfs/household_wells.pdf.

COMMENT 17: **Jose Cardenas** stated that he was submitting additional comments on the permit application, "because of personal experience with Vernon's past disregard of state laws dealing with human safety and health issues."

RESPONSE 17: Section 5.753(e) of the Texas Water Code requires the TCEQ to use a facility's compliance history when making decisions relating to the renewal of a permit. The compliance history for the company and site is reviewed for the five-year period prior to the date the permit application was received by the Executive Director. The compliance history includes multimedia compliance-related components about the site under review, such as: enforcement orders, consent decrees, court judgments, criminal convictions, investigations, and notices of violations.

This permit application was received after September 1, 2002, and the company and site have been rated and classified pursuant to 30 TAC Chapter 60. A company and site may have one of the following classifications and ratings:

High: rating < 0.10 (above-average compliance record)
Average by Default: rating =3.01 (these are for sites which have never been investigated)
Average: 0.10 < rating < 45 (generally complies with environmental regulations)
Poor: 45 < rating (performs below average)

This site has a rating of 1.97 and a classification of Average. The compliance history for a facility is always available to the public. The compliance history may be viewed on the TCEQ website at http://www11.tceq.state.tx.us/oce/ch/.

Any observance or complaints about discharges from this facility can be reported for investigation to the TCEQ by calling the statewide, toll-free Environmental Complaints Hot Line at 1-888-777-3186. Citizen complaints may also be filed on-line at http://www.tceq.state.tx.us/compliance/complaints/index.html. If the facility is found to be out of compliance with the terms or conditions of its permit or with TCEQ regulations, it may be subject to enforcement.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

None.

Respectfully submitted,
Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

By _____
Michelle Bacon, Staff Attorney
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REPRESENTING THE EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on October 30, 2009, the "Executive Director's Response to Public Comment" for proposed new TPDES Permit No. WQ0004868000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

Michelle Bacon, Staff Attorney
Environmental Law Division
State Bar No. 24045436

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 OCT 30 PM 1:18
CHIEF CLERKS OFFICE

TCEQ INTRA-AGENCY TRANSMITTAL MEMO

DATE: **October 30, 2009**

TO: FINAL DOCUMENTS TEAM LEADER
OFFICE OF THE CHIEF CLERK
BUILDING F, MC-105

FROM: Michelle L. Bacon
ENVIRONMENTAL LAW DIVISION
BUILDING A, MC-173

Attached: Executive Director's Response to Comments

Application Information
Program Area (Air, Water or Waste): **WATER**
Permit No. **WQ0004868000** Name: **City of Vernon**
Docket/CID Item # (if known): 65862

OCC Action Required *(check applicable boxes)*
Date stamp and return copy to above-noted ELD Staff Attorney and:

FOR ALL PROGRAM AREAS: *(required only when changes needed to official agency mailing list)*

☐ **Update** the mailing list in your file with the attached contact names and addresses
Include corrected or additional names and addresses for mailing list

FOR WASTE & WATER:

X Send Response to Comments Letter which solicits hearing requests and requests for reconsideration to the mailing list in your files
For Waste and Water this would occur in all circumstances when comments have been received for 801 applications
Or

☐ Send Response to Comments Letter and Motion to Overturn Letter which solicits motions to overturn to the mailing list in your files
For Waste and Water this may occur when all comments have been withdrawn for 801 applications or when comments are received for applications that will not be set for agenda.

FOR AIR (NSR only):

☐ Send RTC with response to comments letter which solicits contested case hearing requests and requests for reconsideration to the mailing list in your files
For Air NSR applications this would occur only when there are pending contested case hearing requests (except no-increase renewals)

☐ Set for commission agenda and send RTC with agenda setting letter
This would occur when there are pending contested case hearing requests on a no-increase renewal and technical review is complete.

☐ Hold until a commission agenda date is requested and then send RTC with the Agenda Setting Letter
For Air applications this would occur when there are pending hearing requests on a no-increase renewal; but technical review is NOT complete.
If this box is checked, ED staff must call the OCC Agenda Team Leader to arrange a specific agenda date.

☐ Place RTC in File - no further action required by OCC
For Air NSR applications this would occur when the matter is uncontested but comments were received, APD will send a copy with MTO letter

☐ Other Instructions: _____