Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*
Mark R. Vickery, P.G., *Executive Director*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 22, 2009

TO: Persons on the attached mailing list.

RE: Wylie Northeast Special Utility District
TPDES Permit No. WQ0014935001

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 Wylie Northeast Special Utility District, 745 Parker Road, Wylie.

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/lg

Enclosures

MAILING LIST
for
Wylie Northeast Special Utility District
TPDES Permit No. WQ0014935001

FOR THE APPLICANT:

Sue Jones
Wylie Northeast Special Utility District
745 Parker Road
Wylie, Texas 75098-4713

Nathan Thompson, P.E.
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PROTESTANTS/INTERESTED PERSONS:

See Attached List

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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FOR OFFICE OF PUBLIC ASSISTANCE
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FOR PUBLIC INTEREST COUNSEL
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FOR THE CHIEF CLERK
via electronic mail:

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PROPOSED TPDES PERMIT NO. WQ0014935001

APPLICATION BY WYLIE NORTHEAST SPECIAL UTILITY DISTRICT	§ § §	BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

2009 DEC 18 PM 1:49
CHIEF CLERKS OFFICE
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 Wylie Northeast Special Utility District's (Applicant) application for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014935001, and the ED's preliminary decision. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk received timely filed comment letters from Martin C. Rochelle representing the North Texas Municipal Water District (NTMWD) and Bruce Dunn and Opie Walter on behalf of the Town of St. Paul. This Response addresses all such timely public comments received, whether or not withdrawn.

BACKGROUND

Description of Facility

The Applicant has applied for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 225,000 gallons per day (gpd) in the interim I phase, a daily average flow not to exceed 450,000 gpd in the interim II phase, and a daily average flow not to exceed 900,000 gpd in the final phase. Sludge generated from the treatment facility would be hauled by a registered transporter and disposed of at a TCEQ permitted landfill, 121 Regional Disposal Facility, Permit No. 2294, in Collin County. The draft permit would also authorize the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill. The proposed facility would serve a development called Lavon 600.

If the draft permit is issued, the facility will be an activated sludge process plant operated in the conventional aeration mode with single stage nitrification. Treatment units include bar screens, aeration basins, final clarifiers, sludge digesters and a chlorine contact chamber. The facility has not been constructed. If the permit is issued, the facility would be located approximately 3,680 feet northeast of the intersection of Parker Road and Aztec Lane in Collin County, Texas 75098.

The treated effluent will be discharged to an unnamed ditch; then to a wetland; then to an unnamed tributary; then to Lavon Lake in Segment No. 0821 of the Trinity River Basin. The unclassified receiving water uses are no significant aquatic life use for the unnamed ditch and unnamed tributary and limited aquatic life use for the wetland. The designated uses for Segment No. 0821 are high aquatic life uses, public water supply and contact recreation. In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A

Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. A Tier 2 antidegradation review has preliminarily determined that by adding 0.5 mg/L Total Phosphorus limits to the permit, no lowering of water quality by more than a de minimis extent of waters with exceptional, high, or intermediate aquatic life use is expected. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. Segment 0821 is not currently listed on the State's inventory of impaired and threatened waters (2008 Clean Water Action Section 303(d) list).

The effluent limitations in the interim I phase of the draft permit, based on a 30-day average, are 10 mg/l Carbonaceous Biochemical Oxygen Demand ($CBOD_5$), 15 mg/l Total Suspended Solids (TSS), 3 mg/l Ammonia Nitrogen (NH_3-N), 0.5 mg/l Total Phosphorus and 4.0 mg/l minimum dissolved oxygen (DO). The effluent limitations in the interim II phase of the draft permit, based on a 30-day average, are 10 mg/l $CBOD_5$, 15 mg/l TSS, 2 mg/l NH_3-N, 0.5 mg/l Total Phosphorus and 4.0 mg/l minimum DO. The effluent limitations in the final phase of the draft permit, based on a 30-day average, are 7 mg/l $CBOD_5$, 15 mg/l TSS, 2 mg/l NH_3-N, 0.5 mg/l Total Phosphorus and 5.0 mg/l minimum DO. In all three phases, the effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

Procedural Background

TCEQ received the permit application on January 12, 2009 and declared it administratively complete on April 3, 2009. The Notice of Application and Intent to Obtain Water Quality Permit (NORI) was published on April 16, 2009 in *The Dallas Morning News*. The application was determined to be technically complete on July 14, 2009, and the Notice of Application and Preliminary Decision (NAPD) was published on October 1, 2009 in *The Dallas Morning News*. The comment period ended on November 2, 2009. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

Access to Rules, Laws and Records

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

Secretary of State website for all administrative rules:
http://www.sos.state.tx.us/tac/index.shtml
TCEQ rules in Title 30 of the Texas Administrative Code:
www.sos.state.tx.us/tac/ (select "View the current Texas Administrative Code" on the right, then "Title 30 Environmental Quality")
Texas statutes: http://www.statutes.legis.state.tx.us/
TCEQ website for downloadable rules in Adobe PDF format:
http://www.tceq.state.tx.us/rules/index.html
Federal rules in Title 40 of the Code of Federal Regulations:
http://www.gpoaccess.gov/CFR/
Federal environmental laws: www.epa.gov/epahome/laws.htm

Commission records for this facility are available for viewing and copying. Those records are located at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor, Office of Chief Clerk (for the current application until final action is taken). The application for this facility has been available for viewing and copying at Wylie Northeast Special Utility District, 745 Parker Road, Wylie since publication of the NORI. The permit application, draft permit, statement of basis/technical summary, and ED's preliminary decision have been available for viewing and copying at the same location since publication of the NAPD.

COMMENTS AND RESPONSES

COMMENT 1:

NTMWD is concerned that the proposed discharge of treated wastewater may have negative water quality implications for Lake Lavon. NTMWD also expressed a more general concern that the proposed discharge could adversely impact water quality and the environment.

RESPONSE 1:

As part of the permit application review process, the ED determines the uses of the receiving water and sets effluent limits that are protective of those uses. In this case, the unclassified receiving water uses are no significant aquatic life use for the unnamed ditch and unnamed tributary and limited aquatic life use for the wetland. The designated uses for Segment No. 0821 are high aquatic life uses, public water supply and contact recreation. In accordance with 30 TAC §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. A Tier 2 antidegradation review has preliminarily determined that if a 0.5 mg/L Total Phosphorus limit is added to the permit, the water quality of receiving waters with exceptional, high, or intermediate aquatic life use is not expected to be lowered by more than a de minimis extent, and that existing uses will be maintained and protected.

The draft permit includes effluent limitations (see pages 2, 2a and 2b of the draft permit) and monitoring requirements to ensure that the proposed effluent limits will not violate the Texas Surface Water Quality Standards for the protection of surface water, groundwater, aquatic and terrestrial life, and human health. It also includes additional requirements for the wastewater treatment system and for the disposal of domestic sludge generated from the wastewater treatment facility, which are designed to protect water quality and human health.

COMMENT 2:

NTMWD explained that it is a major water supplier in the north Texas area and holds significant water rights from Lake Lavon, "a primary source of drinking water for the District's customers." NTMWD further noted that its water rights are located downstream from the proposed discharge. NTMWD commented that, given the importance of Lake Lavon as a drinking water source, the

effluent limitations to be imposed on the Wylie Northeast Special Utility District's domestic wastewater discharge permit should, at a minimum, be as stringent as the limitations in NTMWD's Wilson Creek Wastewater Treatment Plant permit, TPDES Pertmit No. WQ0012446001, which has the following effluent limitations: 5 mg/l Carbonaceous Biochemical Oxygen Demand (5-day), 5 mg/l Total Suspended Solids, 2 mg/l Ammonia Nitrogen, 0.5 mg/l Total Phosphorus and 5 mg/l Dissolved Oxygen. NTMWD also expressed a more general concern that the proposed discharge could adversely impact water supply.

RESPONSE 2:

TPDES permit applications are considered on a case-by-case basis to account for conditions specific to the proposed discharge and the proposed discharge location. Effluent limits are set to account for these differences. TCEQ considers many factors when evaluating effluent limits for a wastewater discharge permit. Effluent limits for Biochemical Oxygen Demand (5-day) or Carbonaceous Biochemical Oxygen Demand (5-day), Ammonia-Nitrogen, and minimum effluent dissolved oxygen are analyzed to ensure that dissolved oxygen concentrations within the water bodies along the discharge route will be maintained above the criteria assigned to them. Dissolved oxygen levels in a water body can be affected by numerous factors related to a wastewater discharge. Among these are the location of the discharge and the size of the discharge.

The effluent limits in the permit for NTMWD's Wilson Creek plant and in the draft permit for the Wylie Northeast Special Utility District are, in both cases, predicted to be adequate to ensure that dissolved oxygen levels in all water bodies along the discharge route, including Lavon Lake, will be maintained above their designated criteria. The effluent limits for the NTMWD's Wilson Creek plant are more stringent than those in the Wylie Northeast Special Utility District draft permit because NTMWD's existing permitted flow phase is 50 times the size of the Wylie Northeast Special Utility District draft permit's proposed final phase flow, and NTMWD's final permitted flow phase is 70 times the size of the draft permit's proposed final phase flow. The effluent limits for oxygen-demanding constituents in the Wylie Northeast Special Utility District's draft permit are in the same general range as those of other similarly-sized wastewater treatment facilities currently permitted to discharge into the Lavon Lake watershed.

COMMENT 3:

NTMWD asked whether the proposed wastewater treatment facility is necessary.

RESPONSE 3:

The Domestic Wastewater Permit Application Technical Report requires that the applicant submit information justifying the need for the flows proposed by the applicant. The applicant is required to provide an anticipated construction start date and operation schedule for each phase being proposed. If construction is dependent upon housing/commercial development, the applicant is required to provide information such as the size of the development (number of lots), the date construction of the development is scheduled to begin, and the anticipated growth rate of the development (number of houses per month or year). Failure to provide sufficient justification of the continued need for the permit and/or each proposed phase may result in a recommendation to deny the application or proposed phases. The applicant is also required to provide the

population estimates and/or projections used to derive the flow estimates and anticipated growth rates for the developments, as well as the source and basis for the population figures (i.e., census and/or other methodology).

On Item 1b of page 8 of 39 of the Domestic Technical Report and Attachment T1.1-1B submitted to the TCEQ on January 12, 2009, the Applicant provided its justification for the proposed three phases over the period of five years. The Executive Director reviewed the justification provided by the Applicant and determined that it was adequate.

COMMENT 4:

NTMWD asked whether the proposed discharge permit violates the Agency's regionalization policy. NTMWD asserted that the Wilson Creek Wastewater Treatment Plant, which is owned and operated by NTMWD and is located within 5 miles of the development, has the capacity to serve the development that the Applicant is proposing to serve. NTMWD also suggested that there may be other third party wastewater treatment facilities in the area with the the ability to provide wastewater service to the area.

RESPONSE 4:

Section 26.0282 of the Texas Water Code provides that, in considering the issuance, amendment, or renewal of a permit to discharge waste, the Commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed areawide or regional waste collection, treatment, and disposal systems not designated as areawide or regional disposal systems by Commission Order. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater. According to Section 26.081 of the Texas Water Code, TCEQ has been mandated to "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state."

The Domestic Wastewater Permit Application Technical Report requires that the applicant submit information concerning regionalization of wastewater treatment plants. The applicant is required to review a three-mile area surrounding the proposed facility to determine if there is a wastewater treatment plant or sewer collection lines within the area that the permittee can use. During the review process for this application, three existing wastewater treatment facilities were identified within three miles radius, namely, the Seis Lagos Wastewater Treatment Facility (TPDES Permit No. WQ0011451001), Collin Park Marina Wastewater Treatment Facility (TPDES Permit No. WQ0012051001) and the East Fork Park Wastewater Treatment Facility (TPDES Permit No. WQ0012052001). However, none of these facilities had sufficient existing capacity to accept the proposed volume of wastewater.

COMMENT 5:

NTMWD expressed concern about potential nuisance odors.

RESPONSE 5:

Pursuant to TCEQ rules, 30 TAC § 309.13(e), the Applicant is required to meet one of three options to abate and control nuisance odor. Those options are:

1) Lagoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc.) may not be located closer than 500 feet to the nearest property line. All other wastewater treatment plant units may not be located closer than 150 feet to the nearest property line. The Applicant must hold legal title or have other sufficient property interest to a contiguous tract of land necessary to meet the distance requirements specified in this paragraph during the time effluent is disposed by irrigation;

2) The Applicant must submit a nuisance odor prevention request for approval by the ED; or

3) The Applicant must submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the Applicant.

According to the permit application, the Applicant is meeting the buffer zone requirements by ownership. If nearby residents experience nuisance odor conditions or any other suspected incidents of noncompliance with the permit or TCEQ rules, they may be reported to TCEQ by calling toll-free 1-888-777-3186 or by calling the TCEQ Region 4 Office in the Dallas/Fort Worth area at 1-817-588-5800. Citizen complaints may also be filed online at http://www.tceq.state.tx.us/compliance/complaints/index.html. If the Applicant fails to comply with all requirements of the permit, the facility may be subject to administrative enforcement action, fines, or penalties.

In addition, the permit does not limit the ability to seek legal remedies against an applicant regarding any potential trespass, nuisance, or other causes of action in response to activities that may result in injury to human health or property or that interfere with the normal use and enjoyment of property.

COMMENT 6:

NTMWD stated that it wished to protest the permit and is requesting a contested case hearing. The Town of St. Paul stated that it is opposed to TCEQ granting this permit, "until such time as the Town of St. Paul can execute a mutually agreeable developer agreement with the developer proposing these improvements to Wylie Northeast."

RESPONSE 6:

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. 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.

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 _____
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on December 18, 2009 the "Executive Director's Response to Public Comment" for Permit No.WQ0014935001 was filed with the Texas Commission on Environmental Quality's Office of Chief Clerk.

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

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2009 DEC 18 PM 1:49
CHIEF CLERKS OFFICE