

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*

February 25, 2010

TO: Persons on the attached mailing list.

RE: Katy 884 Partners, Ltd.  
TPDES Permit No. WQ0014943001

### **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 Brookshire-Pattison Library, 3815 6<sup>th</sup> Street, Brookshire, Texas.

If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

### **How To Request a Contested Case Hearing.**

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
  - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
  - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an **"affected person."** An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

## **How To Request Reconsideration of the Executive Director's Decision.**

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

## **Deadline for Submitting Requests.**

A request for a contested case hearing or reconsideration of the executive director's decision must be **received** by the Chief Clerk's office no later than **30 calendar days** after the date of this letter. You may submit your request electronically at <http://www.tceq.state.tx.us/about/comments.html> or by mail to the following address:

LaDonna Castañuela, Chief Clerk  
TCEQ, MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

## **Processing of Requests.**

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

## **How to Obtain Additional Information.**

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

Sincerely,

  
LaDonna Castañuela  
Chief Clerk

LDC/ka

Enclosures

MAILING LIST  
for  
Katy 884 Partners, Ltd.  
TPDES Permit No. WQ0014943001

FOR THE APPLICANT:

Benson Armistead  
Katy 884 Partners, Ltd.  
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Houston, Texas 77046

Lindsay J. Kovar, P.E.  
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10777 Westheimer Road, Suite 400  
Houston, Texas 77042

Julia Mai, EIT  
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10777 Westheimer Road, Suite 400  
Houston, Texas 77042

FOR THE EXECUTIVE DIRECTOR  
via electronic mail:

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

Thomas Harrigan, 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

PROTESTANTS/INTERESTED PERSONS:

J.R. Dollins, III  
P.O. Box 900  
Katy, Texas 77492

Brad Fennen  
4817 Schlipf Road  
Katy, Texas 77493

Nona Fain  
Robert H. Fain Family Partnership  
One Houston Center  
1221 McKinney, Suite 3100  
Houston, Texas 77010

TCEQ PERMIT NO. WQ0014943001

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CHIEF CLERKS OFFICE

APPLICATION BY

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BEFORE THE

KATY 884 PARTNERS, LTD

TEXAS COMMISSION ON

ENVIRONMENTAL QUALITY

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### EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

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The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the Katy 884 Partners, Ltd. application and Executive Director's preliminary decision. As required by 30 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 Office of Chief Clerk timely received comment letters from the following persons: Nona Fain of The Robert H. Fain Family Partnership, J. R. Dollins, III and Brad Fennen. 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](http://www.tceq.state.tx.us).

### BACKGROUND

#### Description of Facility

Katy 884 Partners, Ltd. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014943001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 750,000 gallons per day. The proposed wastewater treatment facility will serve Waller County MUD No. 9.

The treated effluent will be discharged to a drainage ditch; thence to Cane Island Branch; thence to Buffalo Bayou Above Tidal in Segment No. 1014 of the San Jacinto River Basin. The unclassified receiving water uses are no significant aquatic life use for the drainage ditch and Cane Island Branch. The designated uses for Segment No. 1014 are limited aquatic life use and contact recreation. The facility will be located 1,400 feet northwest of the intersection of Stockdick Road and Schlipf Road in Waller County, Texas 77493.

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. Degradation means "a lowering of water quality by more than a de minimis extent,

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but not to the extent that an existing use is impaired” 30 TAC § 307.5(b)(2). 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 is not required since no exceptional, high, or intermediate aquatic life use water bodies have been identified in the discharge route. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Buffalo Bayou Tidal (Segment 1014) is currently listed on the State's inventory of impaired and threatened waters, the 2008 303(d) list. The listing is specifically for elevated levels of bacteria. The impairment (AU 1014\_01) is segment wide. This facility is designed to provide adequate disinfection and when operated properly should not add to the bacterial impairment of the segment. In addition, in order to ensure that the proposed discharge will meet the stream bacterial standard, and in accordance with TMDL Project No. 22, an effluent limitation of 63 colonies *E. coli* per 100 ml has been added to the draft permit.

Segment 1014 is included in the agency's document *Fourteen Total Maximum Daily Loads for Nickel in the Houston Ship Channel System* (TMDL Project No. 1) adopted by the Commission on June 14, 2002 and approved by EPA in May 2003. The discharge was screened using the methods outlined in the documents, *Procedures to Implement the Texas Surface Water Quality Standards* (IPs), TCEQ January 2003; and *Implementation Plan for Dissolved Nickel in the Houston Ship Channel* (TMDL Implementation Plan), TCEQ, July 2001. The discharge authorized in this draft permit has been added to the inventory of permittee loads and the TMDL model was run to ensure nickel criteria are maintained. The TMDL indicates that the water quality criteria for dissolved nickel are generally being met in the Houston Ship Channel and a specific limit for nickel is not needed for this facility.

A TMDL has also been prepared for Buffalo and Whiteoak Bayous for bacteria (TMDL Project No. 22). On April 8, 2009, the Texas Commission on Environmental Quality (TCEQ) adopted *Eighteen Total Maximum Daily Loads for Bacteria in Buffalo and Whiteoak Bayous and Tributaries*. The U.S. Environmental Protection Agency (USEPA) approved the TMDL on June 11, 2009. The total maximum daily load (TMDL) addresses elevated levels of bacteria in multiple segments and assessment units of these bayous and their tributaries. The waste load allocation (WLA) for wastewater treatment facilities was established as the permitted flow for each facility multiplied by one-half the geometric mean criterion for bacteria. Future growth from existing or new permitted sources is not limited by these TMDLs as long as the sources do not exceed the limits of one-half the bacteria geometric mean criterion for *E. coli*. The effluent limitation of 63 colonies *E. coli* per 100 ml included in the draft permit is consistent with the WLAs provided in the TMDL.

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### Procedural Background

The permit application for permit amendment was received on June 10, 2009 and declared administratively complete on August 14, 2009. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on September 3, 2009 in the *Waller County News Citizen*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on December 3, 2009 in the *Waller County News Citizen*. The public comment period ended on January 4, 2010. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

### **COMMENTS AND RESPONSES**

#### **COMMENT 1:**

Mr. Dollins comments that the area is susceptible to significant overland sheet flow as a result of large rainfall events, that improperly treated wastes may be transported by the storm water flows and that treatment units located near the natural ground level may be flooded. Mr. Fennen comments that the area is subject to flooding, culverts are inadequate and that there are health concerns related to flooding of the treatment plant.

#### **RESPONSE 1:**

The proposed draft permit includes effluent limitations and monitoring requirements for 5-day Carbonaceous Biochemical Oxygen Demand (CBOD<sub>5</sub>), Total Suspended Solids (TSS), Ammonia Nitrogen (NH<sub>3</sub>-N), *E. Coli* bacteria, chlorine residual and pH to ensure that the proposed wastewater treatment plant meets water quality standards for the protection of surface water quality, groundwater and human health according to TCEQ rules and policies. TCEQ does not have jurisdiction to address flooding issues in the wastewater permitting process. 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 during all weather conditions, including during rainfall events and periods of flooding. Please note that the Applicant indicates that the facility is located above the 100-year flood plain, and the proposed draft permit includes Other Requirement No. 5 that requires the Applicant to provide protection for the facility from a 100-year flood. For flooding concerns, please contact the local floodplain administrator for this area. If you need help finding the local floodplain administrator, please call the TCEQ Resource Protection Team at 512/239-4691.

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**COMMENT 2:**

Mr. Dollins comments that the facility would be subject to power outages during storm events and that without power, the discharge would not be disinfected.

**RESPONSE 2:**

The draft permit requires that the Applicant maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of standby generators or storage of wastewater in the collection system. In accordance with 30 TAC § 217.36, an owner shall determine the reliability of the existing commercial power service for a facility from the power outage records obtained from the appropriate power company. If the executive director determines that a power supply is unreliable, the facility shall incorporate an on-site, automatically starting generator capable of ensuring continuous operation of all critical wastewater treatment system units for a duration equal to the longest power outage in the power records. In accordance with 30 TAC § 217.37(a), a disinfection system must include a backup power system capable of providing sufficient power to operate during any power outage.

**COMMENT 3:**

Mr. Dollins comments that collection systems are subject to flooding and would overflow into streets and ditches.

**RESPONSE 3:**

Included in the draft permit is a provision stating that there shall be no unauthorized discharge of wastewater or any other waste. An unauthorized discharge is considered to be any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall. Additionally, 30 TAC Chapter 217 Design Criteria for Domestic Wastewater Systems includes provisions to prevent overflow of wastewater from collections systems, including, but not limited to the following:

- 1) An owner must design a wastewater collection system to handle the transport of the peak dry weather flow from the service area, plus infiltration and inflow;
- 2) A manhole located within a 100-year flood plain must have a means of preventing inflow. A manhole cover must be constructed of impervious material;
- 3) For a collection system pipe that will transport wastewater by gravity flow, the design must specify an infiltration and exfiltration test or a low-pressure air test; and
- 4) All manholes must pass a leakage test.

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**COMMENT 4:**

Ms. Fain and Mr. Dollins request that a public meeting be held regarding this permit application.

**RESPONSE 4:**

The request for a public meeting was denied in accordance with a letter from the TCEQ Environmental Law Division dated February 10, 2010.

**CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT**

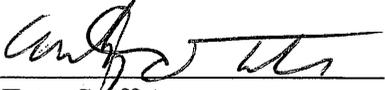
No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.  
Executive Director

Robert Martinez, Director  
Environmental Law Division

  
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Anthony Tatu, Staff Attorney  
Environmental Law Division

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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Katy 884 Partners, LTD  
WQ Permit No. 0014943001  
Executive Director's Response to Public Comment

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**CERTIFICATE OF SERVICE**

I certify that on February 23, 2010, the "Executive Director's Response to Public Comment" for Permit No. WQ0014943001 was filed with the Texas Commission on Environmental Quality's Office of Chief Clerk.



Anthony Tatu, Staff Attorney  
Environmental Law Division  
State Bar No. 00792869

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