DOCKET NUMBER 2010-0654-MWD

APPLICATION BY 130 CACTUS	§	**BEFORE THE**
	§	
INVESTMENT, L.P. for TPDES	§	**TEXAS COMMISSION ON**
	§	
PERMIT NO. WQ0014548001	§	**ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS

I. Introduction

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests (Response) on the application by 130 Cactus Investment, L.P. (130 Cactus) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014548001. **Fancy Fairchild, Hal Kuempel, Vernagene Mott, Marilyn Samuelson (on behalf of Blackland Prairie Concerned Citizens Association)** and **Kathleen Wolfer** requested a contested case hearing.

Attached for Commission consideration are the following:

Attachment A - Technical Summary & Draft Permit
Attachment B – ED's Response to Comments (RTC)
Attachment C - Compliance History
Attachment D - GIS Map

Copies were provided to all parties.

II. Description Of The Facility

130 Cactus applied to the TCEQ for a renewal of TPDES Permit No. WQ0014548001, which would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day in the interim I phase, a daily average flow not to exceed 475,000 gallons per day in the interim II phase, and a daily average flow not to exceed 950,000 gallons per day in the

final phase. The wastewater treament plant (WWTP) would be an activated sludge process plant operated in the complete mix mode. Treatment units would include aeration basins, final clarifier, filters, sludge digester and chlorination chamber. The draft permit would authorize the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill. The WWTP has not been constructed. The WWTP would serve the proposed WildPflower development.

The effluent limitations in all phases of the draft permit, based on a 30 day average, are 5 milligrams per liter (mg/l) carbonaceous oxygen demand ($CBOD_5$), 5 mg/l total suspended solids (TSS), 2 mg/l ammonia nitrogen (NH_3-N), 1.0 mg/l total phosphorus. In the interim I and II phases the dissolved oxygen (DO) limit is 4.0 mg/l minimum, in the final phase the DO limit is 5.0 mg/l. In all 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.

The treated effluent would be discharged to an unnamed tributary; then to Wilbarger Creek; then to Colorado River Above La Grange in Segment No. 1434 of the Colorado River Basin. The unclassified receiving water uses are high aquatic life use for unnamed tributary and high aquatic life use for Wilbarger Creek. The designated uses for Segment No. 1434 are exceptional aquatic life use, public water supply, and contact recreation. The wastewater treatment plant will be located on a 20-acre tract on the south side of Jesse Bohls Road, 7,000 feet east of the Weiss lane intersection in Travis County, Texas 78660.

III. Procedural Background

The application for a permit renewal was received on June 2, 2009 and declared administratively complete on June 11, 2009. The Notice of Receipt and Intent to Obtain a Water

Quality Permit (NORI) was published on June 25, 2009 in the *Austin American Statesman.* The alternative language NORI was published in Spanish on July 2, 2009 in *lahora si!* The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on October 14, 2009 in the *Austin American Statesman.* The alternative language NAPD was published in Spanish on October 21, 2009 in *lahora si!* The Notice of Public Meeting was published on December 22, 2009 in the *Austin American-Statesman.* A public meeting was held in Pflugerville on January 25, 2010, the public comment period ended at the conclusion of the public meeting. A Response to Comments (RTC) was prepared and mailed on March 26, 2010. The Hearing Request period ended April 26, 2010.

IV. Evaluation of Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. For those applications declared administratively complete on or after September 1, 1999, it established new procedures for providing public notice and public comment, and for the Commission's consideration of hearing requests. This application was declared administratively complete on June 11, 2009, and therefore, is subject to the HB 801 requirements. The Commission implemented HB 801 by adopting procedural rules in Title 30 of the Texas Administrative Code (30 TAC) chapters 30, 59, and 55. The regulations governing requests for contested case hearings are found at 30 TAC, chapter 55.

A. Response to Requests

"The Executive Director, the public interest counsel, and applicant may submit written responses to [hearing] requests . . . ." 30 TAC §55.209(d).

Responses to hearing requests must specifically address:

(1) whether the requestor is an affected person;
(2) whether issues raised in the hearing request are disputed;
(3) whether the dispute involves questions of fact or law;
(4) whether the issues were raised during the public comment period;
(5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment; and
(6) a maximum expected duration for the contested case hearing.

30 TAC §55.209(e).

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements.

> A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided . . . and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment. 30 TAC §55.201(c).

A hearing request must substantially comply with the following:

(1) give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;

(2) identify the person's justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;

(3) request a contested case hearing;

(4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

(5) provide any other information specified in the public notice of application.

30 TAC §55.201(d).

C. Requirement that Requestor be an "Affected Person"

In order to grant a contested case hearing, the commission must determine that a requestor is an "affected person."

(a) For any application, 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. An interest common to members of the general public does not qualify as a personal justiciable interest.

(b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.

(c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:

(1) whether the interest claimed is one protected by the law under which the application will be considered;

(2) distance restrictions or other limitations imposed by law on the affected interest;

(3) whether a reasonable relationship exists between the interest claimed and the activity regulated;

(4) likely impact of the regulated activity on the health and safety of the

person, and on the use of property of the person;

(5) likely impact of the regulated activity on use of the impacted natural resource by the person; and

(6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

For the Commission to determine a group or association is an "affected person" the group or association must meet all of the following requirements:

(1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;

(2) the interests the group or association seeks to protect are germane to the organization's purpose; and

(3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

30 TAC § 55.205(1).

D. Referral to the State Office of Administrative Hearings

"When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing." 30 TAC § 50.115(b). "The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue: (1) involves a disputed question of fact; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the application." 30 TAC § 50.115(c).

V. Analysis of the Hearing Requests

The Executive Director has reviewed the Requests and respectfully recommends that the

Commission deny the hearing requests because there is no right to a Contested Case hearing under 30 TAC § 55.201(i).

A. Whether the Requestors are Entitled to a Contested Case Hearing under 30 TAC § 55.201(i)?

The request in this case should be denied because under TWC § 26.028(d) and 30 TAC §55.201(i)(5), there is no right to a contested case hearing for a permit renewal of this sort. Pursuant to 30 TAC § 55.201(i)(5), there is no right to a contested case hearing when: 1) the applicant is not applying to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge, 2) the activity to be authorized by the renewal will maintain or improve the quality of waste authorized to be discharged, 3) any required opportunity for a public meeting has been given, 4) timely response to public comments has been given, and 5) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit.

130 Cactus has satisfied all of the conditions outlined in 30 TAC § 55.201(i)(5); therefore, the Executive Director recommends that all hearing requests be denied. 130 Cactus did not request, and the draft permit does not authorize, an increase in the permitted flow and the discharge location and discharge route remain the same between the current permit and proposed renewal.

All required public meetings were held in this case. A public meeting was held in Pflugerville, Texas on January 25, 2010.

The ED provided timely response to public comments. The comment period in this matter ended November 16, 2009, but was automatically extended to the date of the January 25, 2010 public meeting under 30 TAC § 55.152(b). The Executive Director filed a Response to Public Comments

(RTC) on March 24, 2010. The filing of the RTC on March 24, 2010 was within 60 days of the end of comment period, and was therefore timely under the requirements of 30 TAC § 55.156(b)(3).

The compliance history of 130 Cactus raises no issues concerning the ability of the 130 Cactus to comply with the terms of the draft permit. The compliance history cites a Classification of Average by Default and a Site Rating of 3.01.

The Executive Director made two changes in the draft permit which were not included in the existing permit. As a result of public comment the draft permit includes two new provisions: 1) even though the 130 Cactus WWTP is a Class C facility, it must be operated by a Class B operator and 2) Other Requirement No. 9 has been added which requires that the WWTP be equipped with an automated, on-site, standby generator with the capacity for immediate and automatic activation upon interruption of power to the plant or on-site lift stations. Neither of these changes affects the analyses of whether the Commission should grant the hearing requests.

The Executive Director recommends that the Commission find that the Requestors are not entitled to a contested case hearing under 30 TAC §§ 55.201(i)(5).

B. Alternative Analysis of the Hearing Requests

1. Whether the Requestors Complied With 30 TAC §§ 55.201(c) and (d).

Fancy Fairchild, Hal Kuempel, Vernagene Mott, Marilyn Samuelson, and Kathleen Wolfer filed timely, written CCH requests during the public comment period. Fancy Fairchild and Kathleen Wolfer provided their street addresses; Hal Kuempel, Vernagene Mott, and Marilyn Samuelson provided P.O. Box addresses. Fancy Fairchild, Hal Kuempel, Marilyn Samuelson, and Kathleen Wolfer did not provide phone numbers. Only Vernagene Mott and Kathleen Wolfer identified a

personal justiciable interest affected by the application.

The ED recommends that the Commission find Vernagene Mott and Kathleen Wolfer substantially complied with the requirements of 30 TAC § 55.201(c) and (d). The ED further recommends that the Commission find that Fancy Fairchild, Hal Kuempel, and Marilyn Samuelson did not substantially comply with the requirements of 30 TAC § 55.201(c) and (d).

2. Whether the Requestor Meets the Requirements of an Affected Person

i. *Fancy Fairchild*

Fancy Fairchild requested a public hearing; however, her only comment was that she opposes the permit. Ms. Fairchild did not state that she has justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Ms. Fairchild provides an address in Elgin, more than ten miles from the proposed facility.

The ED recommends that the Commission find that Fancy Fairchild is not an affected person because she does not meet the criteria set out in 30 TAC § 55.203.

ii. *Hal Kuempel*

Hal Kuempel requested a public hearing. He stated that he is opposed to the renewal of the 130 Cactus permit, and provided a P.O. Box address in Pflugerville, but did not identify justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application.

The ED recommends that the Commission find Hal Kuempel is not an affected person because he does not meet the criteria set out in 30 TAC § 55.203.

iii. Vernagene Mott

Vernagene Mott stated that her property is adjacent to the property where 130 Cactus intends to build the WWTP, and that Wilbarger Creek runs through her property. Ms. Mott did not provide a street address; therefore, the ED relied on the adjacent landowner map from 130 Cactus' initial application (by Tejas Viejo Land Company) to determine that Ms. Mott's property is adjacent to the proposed development, but is more than one mile from the discharge point. It appears that Wilbarger Creek runs through a corner of her property, more than a mile downstream of the discharge point. Ms. Mott protested the initial application and was granted party status. Ms. Mott states that her family fishes out of Wilbarger Creek and both domestic animals and wildlife use the water. The draft permit could possibly impact Ms. Mott's health and safety and the use and enjoyment of her property; therefore, she has a person justiciable interest related to a legal right or privilege affected by the application not common to members of the general public.

The ED recommends that the Commission find that Vernagene Mott is an affected person because she meets the criteria set out in 30 TAC § 55.203. However, Ms. Mott has no right to a contested case hearing under the facts of this case.

iv. Marilyn Samuelson

Marilyn Samuelson stated that she was requesting a hearing on behalf of the Blackland Prairie Concerned Citizens Association (Blackland Prairie). Ms. Samuelson expressed concern over the need for the proposed wastewater treatment plant, however, Ms. Samuelson did not identify a member of Blackland Prairie who would have standing in their own right, nor does she describe the purpose of Blackland Prairie Association.

The ED recommends that the Commission find that the Blackland Prairie Concerned Citizens Association is not an affected person because it does not meet the criteria set out in 30 TAC § 55.205.

v. Kathleen Wolfer

According to the address Kathleen Wolfer provided in her hearing request, she does not live on the unnamed tributary of Wilbarger Creek, however she does live within a one-mile radius of the site of the proposed WWTP. Ms. Wolfer expressed concerns over the degradation of Wilbarger Creek, quality of life of residents in the area and odors from the WWTP. The issue of odor from the proposed WWTP is a personal justiciable interest that is not common to members of the general public.

The ED recommends that the Commission find that Kathleen Wolfer is an affected person because she meets the criteria set out in 30 TAC § 55.203. However, Ms. Wolfer has no right to a contested case hearing under the facts of this case.

C. Whether Issues Raised Are Referable to State Office of Administrative Hearings (SOAH) for a Contested Case Hearing.

In addition to recommending to the Commission those persons who qualify as affected persons, the ED analyzes the issues raised in accordance with the regulatory criteria. All of the issues discussed below were raised during the comment period. None of the listed issues were withdrawn. All identified issues in the response are considered disputed, unless otherwise noted.

1. Whether there is a need for the facility since it has not been built and the City of Pflugerville is in the process of obtaining a TPDES permit for a regional facility (Wilbarger Creek Regional Wastewater Treatment Facility – Proposed permit No. WQ0011845005) that could serve the proposed subdivision?

At this time, there are no regional treatment plants within the area of the proposed discharge; however, the City of Pflugerville has submitted an application for the Wilbarger Creek Regional WWTP (TPDES Draft Permit No.WQ0011845005). A public meeting on the Wilbarger Creek Regional WWTP is scheduled for June 3, 2010.

The Texas Water Code § 26.0282 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 area wide or regional disposal systems by Commission Order. The need for this facility is a disputed issue of fact and is relevant and material to the Commission's decision on the application by 130 Cactus for renewal of its TPDES permit.

The ED recommends referring this issue to SOAH.

2. Whether the effluent from the proposed WWTP would be as protective as effluent from the proposed Wilbarger Creek Regional WWTP?

Each application for a WWTP is evaluated based on the facts specific to that particular application; the effluent limits for a specific WWTP are not relevant to any other facility. The comparison of the effluent limits in the 130 Cactus permit to effluent limits in any other permit is not a relevant and material issue of fact regarding the issuance of the 130 Cactus WWTP.

The ED recommends not referring this issue to SOAH.

3. Whether the larger Wilbarger Creek Regional WWTP would be better maintained and more fully staffed and supervised than the smaller WWTP proposed by 130 Cactus?

The operator classification and staffing requirements vary by the size of the facility and are set forth in 30 TAC Chapter 30. The 130 Cactus facility is a class C facility, however based on comments the ED received during the public comment period, the draft permit requires that the facility be operated by a chief operator holding a Category B license or higher. The appropriate classification of operator and staffing issues are issues of law, they are not relevant and material disputed issues of fact regarding the issuance of the 130 Cactus WWTP.

The ED recommends not referring this issue to SOAH.

4. Whether 130 Cactus complied with all appropriate notice requirements?

The rules governing notice are slightly different for new permit applications, major amendment applications and renewal applications. For new permit and major amendment TPDES applications, notice is mailed to landowners located adjacent to the wastewater treatment plant site and landowners with property on either side of the receiving stream for approximately one mile downstream from the point of discharge. Notice is not mailed for renewal applications. However, because appropriate notice is a fundamental issue of fact, the ED recommends that the Commission find that it is also relevant and material to the Commission's decision on the application by 130 Cactus.

The ED recommends referring this issue to SOAH.

5. Whether the effluent from the WWTP would negatively impact wildlife, domestic animals, livestock, water quality, fishing and recreational uses of Wilbarger Creek?

The Executive Director determined that Wilbarger Creek has high aquatic life uses; therefore, the effluent limits were drafted to maintain and protect the high aquatic life uses. The Executive Director determined that if 130 Cactus operates and maintains the facility as required by the

proposed permit and regulations it will be protective of the environment, water quality, and human health. The effluent limits necessary to protect the receiving waters are an issue of fact, and are a relevant and material to the Commission's decision on the application by 130 Cactus.

The ED recommends referring this issue to SOAH.

6. Whether the 130 Cactus WWTP is fiscally prudent?

130 Cactus WWTP is a private developer, therefore they must determine if the proposed facility is fiscally prudent. This is a disputed fact issue, however, it is not relevant and material to the Commission's decision on the issuance of the TPDES permit for the 130 Cactus WWTP.

The ED recommends not referring this issue to SOAH.

7. Whether the odor from the 130 Cactus WWTP would adversely affect the quality of life of the area residents?

Facilities that treat wastewater have the potential to generate odors. TCEQ's rules require that the 130 Cactus WWTP meet one of three options (buffer zones, odor abatement plan or evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by 130 Cactus) to abate and control nuisance odor. According to its permit application, 130 Cactus will meet the buffer zone requirements by ownership. Odor is a relevant and material disputed issue of fact; therefore the ED recommends that it be referred to SOAH.

The ED recommends referring this issue to SOAH.

8. Whether the increase in nutrients from the 130 Cactus WWTP would adversely affect the receiving waters.

The draft permit was developed in accordance with the Texas Surface Water Quality Standards, which are designed to maintain the quality of water in the state and to be protective of

human health and the environment. The draft permit includes effluent limitations and monitoring requirements designed to ensure that the effluent meets the Texas Surface Water Quality Standards. The impact to the receiving waters is a disputed issue of fact that is relevant and material to the Commission's decision on the 130 Cactus application.

The ED recommends referring this issue to SOAH.

9. Whether the TCEQ has data on upper Wilbarger Creek?

This issue is not a disputed issue of fact that is relevant and material to the Commission's decision on the issuance of the TPDES permit for the 130 Cactus WWTP.

The ED recommends not referring this issue to SOAH.

10. Whether TCEQ has a projected timeline for the Wilbarger Creek Regional WWTP?

This amendment request is for the 130 Cactus WWTP, the projected timeline for the Wilbarger Creek WWTP is not a disputed issue of fact that is relevant and material to the Commission's decision on the issuance of the TPDES permit for the 130 Cactus WWTP.

The ED recommends not referring this issue to SOAH.

11. Whether 130 Cactus should be required to notify the Motts by phone of any non-compliance in accordance with the settlement agreement from the initial permitting action?

The settlement agreement was between Tejas Viejo Land Company (and its successors) and Charles and Vernagene Mott, and is not a relevant and material disputed issue of fact regarding the issuance of the TPDES permit for the 130 Cactus WWTP.

The ED recommends not referring this issue to SOAH.

12. Whether 130 Cactus should be required to provide the Motts with discharge monitoring reports and copies of any violations in accordance with the settlement agreement from the initial permitting action?

The settlement agreement was between Tejas Viejo Land Company (and its successors) and Charles and Vernagene Mott, and is not a relevant and material disputed issue of fact regarding the issuance of the TPDES permit for the 130 Cactus WWTP.

The ED recommends not referring this issue to SOAH.

13. Whether 130 Cactus should be required to notify the Motts prior to commencement of construction of each phase of the WWTP in accordance with the settlement agreement from the initial permitting action?

The settlement agreement was between Tejas Viejo Land Company (and its successors) and Charles and Vernagene Mott, and is not a relevant and material disputed issue of fact regarding the issuance of the TPDES permit for the 130 Cactus WWTP.

The ED recommends not referring this issue to SOAH.

14. Whether 130 Cactus should be required to provide the Motts with notice of any change in ownership of the WWTP or transfer of the permit in accordance with the settlement agreement from the initial permitting action?

The settlement agreement was between Tejas Viejo Land Company (and its successors) and Charles and Vernagene Mott, and is not a relevant and material disputed issue of fact regarding the issuance of the TPDES permit for the 130 Cactus WWTP.

The ED recommends not referring this issue to SOAH.

15. Whether TCEQ will provide proof of 130 Cactus' noncompliance or will the downstream property owners be required to hire an attorney to prove the impact of the noncompliance property or the environment?

The TCEQ is responsible for the conduction of regular inspections of WWTPs throughout Texas. Any violations found during the inspection are documented, and if necessary, TCEQ initiates enforcement action. The issue of downstream property owners being required to hire an attorney is

not a relevant and material disputed issue of fact regarding the issuance of the TPDES permit for the 130 Cactus WWTP.

The ED recommends not referring this issue to SOAH.

16. Whether the TCEQ could authorize an increase in the flow limits without providing notice to the downstream landowners.

The draft permit authorizes a maximum discharge of 0.95 million gallons per day (MDG). 130 Cactus would have to apply for a major amendment to obtain authorization to discharge more than 0.95 MGD. Any request for a major amendment requires, among other things, mailed notice to adjacent property owners and published notice. The issue of future notice of a permitted increase in flow is an issue of law not fact and is not relevant and material to the Commission's decision on the application by 130 Cactus for a TPDES permit.

The ED recommends not referring this issue to SOAH.

17. Whether the data on Wilbarger Creek is available to the public?

This is an issue of law not fact and is not relevant and material to the Commission's decision on the application by 130 Cactus for a TPDES permit.

The ED recommends not referring this issue to SOAH.

18. Whether the 130 Cactus WWTP will be designed using current standards or lower standards?

The draft permit provides that the WWTP must comply with the WWTP design requirements in 30 Texas Administrative Code Chapter 217. This is an issue of law not fact and is not relevant and material to the Commission's decision on the application by 130 Cactus for a TPDES permit.

The ED recommends not referring this issue to SOAH.

19. Whether TCEQ can document the City of Pflugerville does not have capacity to serve the

proposed development?

The initial application filed by Tejas Viejo Land Company included a letter from the City of Pflugerville which indicated that it did not have capacity to serve the proposed WildPflower Development. This document is available at the TCEQ central office upon request. This issue is not a relevant and material disputed issue of fact regarding the issuance of the TPDES permit for the 130 Cactus WWTP.

The ED recommends not referring this issue to SOAH.

VI. Duration of the Contested Case Hearing

If the Commission determines that this matter should be sent to SOAH for a Contested Case Hearing, the ED recommends that the duration between preliminary hearing and the presentation of a proposal for decision before the Commission be nine months.

VII. Executive Director's Recommendation

The ED recommends the following actions by the Commission:

1. The Commission deny the hearing requests based on TWC § 26.028(d) and 30 TAC §55.201(i)(5), which provide that there is no right to a contested case hearing for a permit renewal or amendment of this sort.

2. If the Commission determines that the application for renewal of the 130 Cactus permit should be sent to the State Office of Administrative Hearings for a Contested Case Hearing that the Commission:

a. find Vernagene Mott and Kathleen Wolfer are affected persons, however, the ED cannot recommend granting their requests for a contested case hearing because they are not entitled

to hearing under the facts of this case;

b. deny all other hearing requests;

c. refer issues 1, 4, 5, 7 and 8; and

d. refer the matter to Alternative Dispute Resolution for a reasonable period.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G., Executive Director

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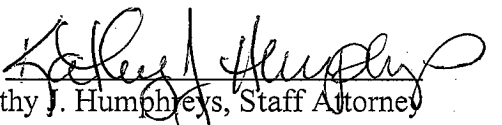
By 
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CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2010 the original and seven true and correct copies of the "Executive Director's Response to Hearing Request" relating to the application of 130 Cactus Investment, LP, for an amendment to TPDES Permit No. WQ0014548001 were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.

Kathy J. Humphreys, Staff Attorney
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MS MARILYN SAMUELSON
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Attachment A

STATEMENT OF BASIS/TECHNICAL SUMMARY
AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION

DESCRIPTION OF APPLICATION

Applicant:	130 Cactus Investment, LP Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014548001, EPA ID No. TX0127001
Regulated Activity:	Domestic Wastewater Permit
Type of Application:	Renewal
Request:	Renewal with no changes
Authority:	Federal CWA § 402; TWC § 26.027; 30 TAC Chapters 30, 305, 307, 309, 312, and 319; Commission policies; and EPA guidelines.

EXECUTIVE DIRECTOR RECOMMENDATION

The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The proposed permit includes an expiration date of September 1, 2014 according to 30 TAC § 305.71, Basin Permitting.

REASON FOR PROJECT PROPOSED

The applicant has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of the existing permit that authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.075 million gallons per day in the interim I phase, a daily average flow not to exceed 0.475 million gallons per day in the interim II phase, and a daily average flow not to exceed 0.95 million gallons per day in the final phase. The proposed wastewater treatment facility will serve Wildpflower Residential Development.

PROJECT DESCRIPTION AND LOCATION

The WildPflower Wastewater Treatment Facility will be an activated sludge process plant operated in the complete mix mode. Treatment units include aeration basins, final clarifier, filters, sludge digester and chlorination chamber. The facility has not been constructed.

The draft permit authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

The plant site will be located on a 20-acre tract on the south side of Jesse Bohls Road, 7,000 feet east of the Weiss lane intersection in Travis County, Texas 78660.

The treated effluent will be discharged to an unnamed tributary; thence to Wilbarger Creek; thence to Colorado River Above La Grange in Segment No. 1434 of the Colorado River Basin. The unclassified receiving water uses are high aquatic life use for unnamed tributary and high aquatic life use for Wilbarger Creek. The designated uses for Segment No. 1434 are exceptional aquatic life use, public water supply, and contact recreation. The effluent limitations in the draft permit will maintain and protect the existing instream uses. All determinations are preliminary and subject to additional review and/or revisions.

Effluent limitations for the conventional effluent parameters (i.e., Biochemical Oxygen Demand or Carbonaceous

Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on stream standards and waste load allocations for water quality limited streams as established in the Texas Water Quality Standards and the water quality management plan.

The effluent limitations in the draft permit have been reviewed for consistency with the State of Texas Water Quality Management Plan (WQMP). The proposed effluent limitations are contained in the approved WQMP. A Waste Load Evaluation has not been completed for the segment.

The Houston Toad (Bufo houstonensis Sanders), an endangered aquatic-dependent species of critical concern, occurs within the Segment 1434 watershed as well as the United States Geological Survey hydrologic unit code 12090301. This determination is based on the United States Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES; September 14, 1998, October 21, 1998 update). To make this determination for TPDES permits, TCEQ and EPA only consider aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. Species distribution information for the Segment 1434 watershed is provided by the United States Fish and Wildlife Service and documents the toad's presence solely in the vicinity of Alum Creek, Copperas Creek, Gills Branch, Piney Creek, Price Creek and Puss Hollow in Bastrop County, which are located in separate subwatersheds from the facility associated with this permit action. Based upon this information, it is determined that the facility's discharge is not expected to impact the Houston Toad. The permit does not require EPA review with respect to the presence of endangered or threatened species.

Segment No. 1434 is not currently listed on the State's inventory of impaired and threatened waters (the CWA §303(d) list).

SUMMARY OF EFFLUENT DATA

N/A - There is no effluent data since the facility has not been constructed.

PROPOSED PERMIT CONDITIONS

The draft permit authorizes a discharge of treated domestic wastewater at an interim I volume not to exceed a daily average flow of 0.075 million gallons per day (MGD), an interim II volume not to exceed a daily average flow of 0.475 million gallons per day, and a final volume not to exceed a daily average flow of 0.95 million gallons per day.

The effluent limitations in the interim I and interim II phase of the draft permit, based on a 30 day average, are 5 mg/l $CBOD_5$, 5 mg/l TSS, 2 mg/l NH_3-N, 1.0 mg/l Total P and 4.0 mg/l minimum dissolved oxygen (DO). The effluent limitations in the final phase of the draft permit, based on a 30 day average, are 5 mg/l $CBOD_5$, 5 mg/l TSS, 2 mg/l NH_3-N, 1.0 mg/l Total P and 5.0 mg/l minimum dissolved oxygen (DO). In all 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.

The draft permit includes Sludge Provisions according to the requirements of 30 TAC Chapter 312, Sludge Use, Disposal and Transportation. The draft permit authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

SUMMARY OF CHANGES FROM APPLICATION

None.

SUMMARY OF CHANGES FROM EXISTING PERMIT

The effluent limitation for minimum dissolved oxygen (DO) in the final phase of the draft permit is 5.0 mg/l, instead of the existing permit effluent limitation of 4.0 mg/l.

The Standard Permit Conditions, Sludge Provisions, and Other Requirements sections of the draft permit have been updated.

BASIS FOR PROPOSED DRAFT PERMIT

The following items were considered in developing the proposed permit draft:

1. Application received June 2, 2009.

2. TPDES Permit No. WQ0014548001 issued September 22, 2006.

3. The effluent limitations and/or conditions in the draft permit comply with the Texas Surface Water Quality Standards, 30 TAC §§ 307.1 - 307.10, effective August 17, 2000. The effluent limitations and/or conditions in the draft permit comply with the requirements in Watershed Protection, 30 TAC Chapter 311, Subchapter E: Colorado River Watershed.

4. The effluent limitations in the draft permit meet the requirements for secondary treatment and the requirements for disinfection according to 30 TAC Chapter 309, Subchapter A: Domestic Wastewater Effluent Limitations.

5. Interoffice memoranda from the Water Quality Assessment Section of the TCEQ Water Quality Division.

6. Consistency with the Coastal Management Plan: The facility is not located in the Coastal Management Program boundary.

7. Procedures to Implement the Texas Surface Water Quality Standards, Texas Commission on Environmental Quality, January 2003.

8. Texas 2008 Clean Water Act Section 303(d) List, Texas Commission on Environmental Quality, April 1, 2008; approved by the EPA July 9, 2008.

9. TNRCC Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits, Document No. 98-001.000-OWR-WQ, May 1998.

PROCEDURES FOR FINAL DECISION

When an application is declared administratively complete, the Chief Clerk sends a letter to the applicant advising the applicant to publish the Notice of Receipt of Application and Intent to Obtain Permit in the newspaper. In addition, the Chief Clerk instructs the applicant to place a copy of the application in a public place for review and copying in the county where the facility is or will be located. This application will be in a public place throughout

the comment period. The Chief Clerk also mails this notice to any interested persons and, if required, to landowners identified in the permit application. This notice informs the public about the application, and provides that an interested person may file comments on the application or request a contested case hearing or a public meeting.

Once a draft permit is completed, it is sent, along with the Executive Director's preliminary decision, as contained in the technical summary or fact sheet, to the Chief Clerk. At that time, Notice of Application and Preliminary Decision will be mailed to the same people and published in the same newspaper as the prior notice. This notice sets a deadline for making public comments. The applicant must place a copy of the Executive Director's preliminary decision and draft permit in the public place with the application. This notice sets a deadline for public comment.

Any interested person may request a public meeting on the application until the deadline for filing public comments. A public meeting is intended for the taking of public comment, and is not a contested case proceeding.

After the public comment deadline, the Executive Director prepares a response to all significant public comments on the application or the draft permit raised during the public comment period. The Chief Clerk then mails the Executive Director's Response to Comments and Final Decision to people who have filed comments, requested a contested case hearing, or requested to be on the mailing list. This notice provides that if a person is not satisfied with the Executive Director's response and decision, they can request a contested case hearing or file a request to reconsider the Executive Director's decision within 30 days after the notice is mailed.

The Executive Director will issue the permit unless a written hearing request or request for reconsideration is filed within 30 days after the Executive Director's Response to Comments and Final Decision is mailed. If a hearing request or request for reconsideration is filed, the Executive Director will not issue the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

If the Executive Director calls a public meeting or the Commission grants a contested case hearing as described above, the Commission will give notice of the date, time, and place of the meeting or hearing. If a hearing request or request for reconsideration is made, the Commission will consider all public comments in making its decision and shall either adopt the Executive Director's response to public comments or prepare its own response.

For additional information about this application, contact Anupama Krishnan at (512) 239-4701.

Larry Diamond
Municipal Permits Team
Wastewater Permitting Section (MC 148)

Date

TPDES PERMIT NO.
WQ0014548001
[For TCEQ office use only -
EPA I.D. No. TX0127001]

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. Box 13087
Austin, Texas 78711-3087

This is a renewal that replaces TPDES Permit No. WQ0014548001 issued September 22, 2006.

PERMIT TO DISCHARGE WASTES
under provisions of
Section 402 of the Clean Water Act
and Chapter 26 of the Texas Water Code

130 Cactus Investment, LP

whose mailing address is

2207 Lake Austin Boulevard
Austin, Texas 78703

is authorized to treat and discharge wastes from the WildPflower Wastewater Treatment Facility, SIC Code 4952

located on a 20-acre tract on the south side of Jesse Bohls Road, 7,000 feet east of the Weiss lane intersection in Travis County, Texas 78660

to an unnamed tributary; thence to Wilbarger Creek; thence to Colorado River Above La Grange in Segment No. 1434 of the Colorado River Basin

only according with effluent limitations, monitoring requirements and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

This permit shall expire at midnight, **September 1, 2014**.

ISSUED DATE:

For the Commission

INTERIM I EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS Outfall Number 001

1. During the period beginning upon the date of issuance and lasting through the completion of expansion of the 0.475 million gallons per day (MGD) facilities, the permittee is authorized to discharge subject to the following effluent limitations:

   The daily average flow of effluent shall not exceed 0.075 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 250 gallons per minute (gpm).

Effluent Characteristic	Discharge Limitations				Minimum Self-Monitoring Requirements	
	Daily Avg	7-day Avg	Daily Max	Single Grab	Report Daily Avg. & Max. Single Grab	
	mg/l(lbs/day)	mg/l	mg/l	mg/l	Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	N/A	Five/week	Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (3.1)	10	20	30	One/week	Grab
Total Suspended Solids	5 (3.1)	10	20	30	One/week	Grab
Ammonia Nitrogen	2 (1.3)	5	10	15	One/week	Grab
Total Phosphorus	1 (0.63)	2	4	6	One/week	Grab

2. 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), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.

6. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

INTERIM II EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS Outfall Number 001

1. During the period beginning upon the completion of expansion of the 0.475 million gallons per day (MGD) facilities and lasting through the completion of expansion of the 0.950 MGD facilities, the permittee is authorized to discharge subject to the following effluent limitations:

   The daily average flow of effluent shall not exceed 0.475 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 1253 gallons per minute (gpm).

Effluent Characteristic	Discharge Limitations				Minimum Self-Monitoring Requirements	
	Daily Avg	7-day Avg	Daily Max	Single Grab	Report Daily Avg. & Max. Single Grab	
	mg/l(lbs/day)	mg/l	mg/l	mg/l	Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	N/A	Five/week	Instantaneous
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (20)	10	20	30	One/week	Grab
Total Suspended Solids	5 (20)	10	20	30	One/week	Grab
Ammonia Nitrogen	2 (7.9)	5	10	15	One/week	Grab
Total Phosphorus	1 (4.0)	2	4	6	One/week	Grab

2. 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), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.

7. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS Outfall Number 001

1. During the period beginning upon the completion of expansion of the 0.95 million gallons per day (MGD) facilities and lasting through the date of expiration, the permittee is authorized to discharge subject to the following effluent limitations:

   The daily average flow of effluent shall not exceed 0.95 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 2309 gallons per minute (gpm).

Effluent Characteristic	Discharge Limitations				Minimum Self-Monitoring Requirements	
	Daily Avg	7-day Avg	Daily Max	Single Grab	Report Daily Avg. & Daily Max.	
	mg/l(lbs/day)	mg/l	mg/l	mg/l	Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	N/A	Continuous	Totalizing Meter
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (40)	10	20	30	One/week	Composite
Total Suspended Solids	5 (40)	10	20	30	One/week	Composite
Ammonia Nitrogen	2 (16)	5	10	15	One/week	Composite
Total Phosphorus	1(7.9)	2	4	6	One/week	Composite

2. 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), and shall be monitored daily by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored twice per month by grab sample.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.

6. The effluent shall contain minimum dissolved oxygen of 5.0 mg/l and shall be monitored once per week by grab sample.

DEFINITIONS AND STANDARD PERMIT CONDITIONS

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC § 305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code (TWC) §§ 5.103 and 5.105, and the Texas Health and Safety Code (THSC) §§ 361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in TWC § 26.001 and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

1. Flow Measurements

   a. Annual average flow - the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder and limited to major domestic wastewater discharge facilities with one million gallons per day or greater permitted flow.

   b. Daily average flow - the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.

   c. Daily maximum flow - the highest total flow for any 24-hour period in a calendar month.

   d. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.

   e. 2-hour peak flow (domestic wastewater treatment plants) - the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.

   f. Maximum 2-hour peak flow (domestic wastewater treatment plants) - the highest 2-hour peak flow for any 24-hour period in a calendar month.

2. Concentration Measurements

   a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.

      i. For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

      ii. For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.

   b. 7-day average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar week, Sunday through Saturday.

   c. Daily maximum concentration - the maximum concentration measured on a single day, by the sample type specified in the permit, within a period of one calendar month.

   d. Daily discharge - the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the sampling day.

      The daily discharge determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily discharge determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that day.

e. Bacteria concentration (Fecal coliform, *E. coli*, or Enterococci) - the number of colonies of bacteria per 100 milliliters effluent. The daily average bacteria concentration is a geometric mean of the values for the effluent samples collected in a calendar month. The geometric mean shall be determined by calculating the nth root of the product of all measurements made in a calendar month, where n equals the number of measurements made; or, computed as the antilogarithm of the arithmetic mean of the logarithms of all measurements made in a calendar month. For any measurement of bacteria equaling zero, a substituted value of one shall be made for input into either computation method. If specified, the 7-day average for bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.

f. Daily average loading (lbs/day) - the arithmetic average of all daily discharge loading calculations during a period of one calendar month. These calculations must be made for each day of the month that a parameter is analyzed. The daily discharge, in terms of mass (lbs/day), is calculated as (Flow, MGD x Concentration, mg/l x 8.34).

g. Daily maximum loading (lbs/day) - the highest daily discharge, in terms of mass (lbs/day), within a period of one calendar month.

3. Sample Type

a. Composite sample - For domestic wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC § 319.9 (a). For industrial wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC § 319.9 (b).

b. Grab sample - an individual sample collected in less than 15 minutes.

4. Treatment Facility (facility) - wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.

5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids that have not been classified as hazardous waste separated from wastewater by unit processes.

6. Bypass - the intentional diversion of a waste stream from any portion of a treatment facility.

MONITORING AND REPORTING REQUIREMENTS

1. Self-Reporting

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC §§ 319.4 - 319.12. Unless otherwise specified, a monthly effluent report shall be submitted each month, to the Enforcement Division (MC 224), by the 20th day of the following month for each discharge which is described by this permit whether or not a discharge is made for that month. Monitoring results must be reported on an approved self-report form that is signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act (CWA); TWC §§ 26, 27, and 28; and THSC § 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

2. Test Procedures

a. Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§ 319.11 - 319.12. Measurements, tests, and calculations shall be accurately accomplished in a representative manner.

b. All laboratory tests submitted to demonstrate compliance with this permit must meet the requirements of 30 TAC § 25, Environmental Testing Laboratory Accreditation and Certification.

3. Records of Results

   a. Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

   b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR § 264.73(b)(9) shall be retained at the facility site, or shall be readily available for review by a TCEQ representative for a period of three years from the date of the record or sample, measurement, report, application or certification. This period shall be extended at the request of the Executive Director.

   c. Records of monitoring activities shall include the following:

      i. date, time and place of sample or measurement;
      ii. identity of individual who collected the sample or made the measurement.
      iii. date and time of analysis;
      iv. identity of the individual and laboratory who performed the analysis;
      v. the technique or method of analysis; and
      vi. the results of the analysis or measurement and quality assurance/quality control records.

      The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

4. Additional Monitoring by Permittee

   If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, all results of such monitoring shall be included in the calculation and reporting of the values submitted on the approved self-report form. Increased frequency of sampling shall be indicated on the self-report form.

5. Calibration of Instruments

   All automatic flow measuring or recording devices and all totalizing meters for measuring flows shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be retained at the facility site and/or shall be readily available for review by a TCEQ representative for a period of three years.

6. Compliance Schedule Reports

   Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date to the Regional Office and the Enforcement Division (MC 224).

7. Noncompliance Notification

   a. In accordance with 30 TAC § 305.125(9) any noncompliance which may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Report of such information shall be provided orally or by facsimile transmission (FAX) to the Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the Regional Office and the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

   b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:

      i. Unauthorized discharges as defined in Permit Condition 2(g).
      ii. Any unanticipated bypass that exceeds any effluent limitation in the permit.
      iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.

c. In addition to the above, any effluent violation which deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the Regional Office and the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.

d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances shall be reported on the approved self-report form.

8. In accordance with the procedures described in 30 TAC §§ 35.301 - 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.

9. Changes in Discharges of Toxic Substances

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Regional Office, orally or by facsimile transmission within 24 hours, and both the Regional Office and the Enforcement Division (MC 224) in writing within five (5) working days, after becoming aware of or having reason to believe:

a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D, Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

i. One hundred micrograms per liter (100 µg/L);
ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
iv. The level established by the TCEQ.

b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

i. Five hundred micrograms per liter (500 µg/L);
ii. One milligram per liter (1 mg/L) for antimony;
iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
iv. The level established by the TCEQ.

10. Signatories to Reports

All reports and other information requested by the Executive Director shall be signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).

11. All Publicly Owned Treatment Works (POTWs) must provide adequate notice to the Executive Director of the following:

a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to CWA § 301 or § 306 if it were directly discharging those pollutants;

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

c. For the purpose of this paragraph, adequate notice shall include information on:

i. The quality and quantity of effluent introduced into the POTW; and
ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

PERMIT CONDITIONS

1. General

   a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.

   b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:

      i. Violation of any terms or conditions of this permit;
      ii. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
      iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.

   c. The permittee shall furnish to the Executive Director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.

2. Compliance

   a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.

   b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.

   c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

   d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.

   e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.

   f. A permit may be amended, suspended and reissued, or revoked for cause in accordance with 30 TAC §§ 305.62 and 305.66 and TWC§ 7.302. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

   g. There shall be no unauthorized discharge of wastewater or any other waste. For the purpose of this permit, 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 or otherwise defined in the Other Requirements section of this permit.

   h. In accordance with 30 TAC § 305.535(a), the permittee may allow any bypass to occur from a TPDES permitted facility which does not cause permitted effluent limitations to be exceeded or an unauthorized discharge to occur, but only if the bypass is also for essential maintenance to assure efficient operation.

   i. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under TWC §§ 7.051 - 7.075 (relating to Administrative Penalties), 7.101 - 7.111 (relating to Civil Penalties), and 7.141 - 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal CWA §§ 301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under the CWA § 402, or any requirement imposed in a pretreatment program approved under the CWA §§ 402 (a)(3) or 402 (b)(8).

3. Inspections and Entry

   a. Inspection and entry shall be allowed as prescribed in the TWC Chapters 26, 27, and 28, and THSC § 361.

   b. The members of the Commission and employees and agents of the Commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order of the Commission. Members, employees, or agents of the Commission and Commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, Commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, Commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the Executive Director may invoke the remedies authorized in TWC § 7.002. The statement above, that Commission entry shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection, is not grounds for denial or restriction of entry to any part of the facility, but merely describes the Commission's duty to observe appropriate rules and regulations during an inspection.

4. Permit Amendment and/or Renewal

   a. The permittee shall give notice to the Executive Director as soon as possible of any planned physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements. Notice shall also be required under this paragraph when:

      i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in accordance with 30 TAC § 305.534 (relating to New Sources and New Dischargers); or

      ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements in Monitoring and Reporting Requirements No. 9;

      iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

   b. Prior to any facility modifications, additions, or expansions that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.

   c. The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate.

   d. Prior to accepting or generating wastes which are not described in the permit application or which would result in a significant change in the quantity or quality of the existing discharge, the permittee must report the proposed changes to the Commission. The permittee must apply for a permit amendment reflecting any necessary changes in permit conditions, including effluent limitations for pollutants not identified and limited by this permit.

   e. In accordance with the TWC § 26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.

   f. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under CWA § 307(a) for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be modified or revoked and reissued to conform to the toxic effluent standard or prohibition. The permittee shall comply with effluent standards or prohibitions established under CWA § 307(a) for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit Transfer

   a. Prior to any transfer of this permit, Commission approval must be obtained. The Commission shall be notified in writing of any change in control or ownership of facilities authorized by this permit. Such notification should be sent to the Applications Review and Processing Team (MC 148) of the Water Quality Division.

   b. A permit may be transferred only according to the provisions of 30 TAC § 305.64 (relating to Transfer of Permits) and 30 TAC § 50.133 (relating to Executive Director Action on Application or WQMP update).

6. Relationship to Hazardous Waste Activities

   This permit does not authorize any activity of hazardous waste storage, processing, or disposal that requires a permit or other authorization pursuant to the Texas Health and Safety Code.

7. Relationship to Water Rights

   Disposal of treated effluent by any means other than discharge directly to water in the state must be specifically authorized in this permit and may require a permit pursuant to TWC Chapter 11.

8. Property Rights

   A permit does not convey any property rights of any sort, or any exclusive privilege.

9. Permit Enforceability

   The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. Relationship to Permit Application

    The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

11. Notice of Bankruptcy.

    a. Each permittee shall notify the Executive Director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:
       i. the permittee;
       ii. an entity (as that term is defined in 11 USC, § 101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or
       iii. an affiliate (as that term is defined in 11 USC, § 101(2)) of the permittee.

    b. This notification must indicate:
       i. the name of the permittee and the permit number(s);
       ii. the bankruptcy court in which the petition for bankruptcy was filed; and
       iii. the date of filing of the petition.

OPERATIONAL REQUIREMENTS

1. The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.

2. Upon request by the Executive Director, the permittee shall take appropriate samples and provide proper analysis in order to demonstrate compliance with Commission rules. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all applicable provisions of 30 TAC Chapter 312 concerning sewage sludge use and disposal and 30 TAC §§ 319.21 - 319.29 concerning the discharge of certain hazardous metals.

3. Domestic wastewater treatment facilities shall comply with the following provisions:

   a. The permittee shall notify the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, in writing, of any facility expansion at least 90 days prior to conducting such activity.

   b. The permittee shall submit a closure plan for review and approval to the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. Closure is the act of permanently taking a waste management unit or treatment facility out of service and includes the permanent removal from service of any pit, tank, pond, lagoon, surface impoundment and/or other treatment unit regulated by this permit.

4. The permittee is responsible for installing prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.

5. Unless otherwise specified, the permittee shall provide a readily accessible sampling point and, where applicable, an effluent flow measuring device or other acceptable means by which effluent flow may be determined.

6. The permittee shall remit an annual water quality fee to the Commission as required by 30 TAC Chapter 21. Failure to pay the fee may result in revocation of this permit under TWC § 7.302(b)(6).

7. Documentation

   For all written notifications to the Commission required of the permittee by this permit, the permittee shall keep and make available a copy of each such notification under the same conditions as self-monitoring data are required to be kept and made available. Except for information required for TPDES permit applications, effluent data, including effluent data in permits, draft permits and permit applications, and other information specified as not confidential in 30 TAC §§ 1.5(d), any information submitted pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted in the manner prescribed in the application form or by stamping the words confidential business information on each page containing such information. If no claim is made at the time of submission, information may be made available to the public without further notice. If the Commission or Executive Director agrees with the designation of confidentiality, the TCEQ will not provide the information for public inspection unless required by the Texas Attorney General or a court pursuant to an open records request. If the Executive Director does not agree with the designation of confidentiality, the person submitting the information will be notified.

8. Facilities that generate domestic wastewater shall comply with the following provisions; domestic wastewater treatment facilities at permitted industrial sites are excluded.

   a. Whenever flow measurements for any domestic sewage treatment facility reach 75% of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the domestic wastewater treatment and/or collection facilities. Whenever the flow reaches 90% of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a domestic wastewater treatment facility which reaches 75% of the permitted daily average or annual average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee shall submit an engineering report supporting this claim to the Executive Director of the Commission.

      If in the judgment of the Executive Director the population to be served will not cause permit noncompliance, then the requirement of this section may be waived. To be effective, any waiver must be in writing and signed by the Director of the Enforcement Division (MC 149) of the Commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

   b. The plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Commission and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.

c. Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment, and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.

9. Domestic wastewater treatment plants shall be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30.

10. For Publicly Owned Treatment Works (POTWs), the 30-day average (or monthly average) percent removal for BOD and TSS shall not be less than 85%, unless otherwise authorized by this permit.

11. Facilities that generate industrial solid waste as defined in 30 TAC § 335.1 shall comply with these provisions:

a. Any solid waste, as defined in 30 TAC § 335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335, relating to Industrial Solid Waste Management.

b. Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.

c. The permittee shall provide written notification, pursuant to the requirements of 30 TAC § 335.8(b)(1), to the Environmental Cleanup Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.

d. Construction of any industrial solid waste management unit requires the prior written notification of the proposed activity to the Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division. No person shall dispose of industrial solid waste, including sludge or other solids from wastewater treatment processes, prior to fulfilling the deed recordation requirements of 30 TAC § 335.5.

e. The term "industrial solid waste management unit" means a landfill, surface impoundment, waste-pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or any other structure vessel, appurtenance, or other improvement on land used to manage industrial solid waste.

f. The permittee shall keep management records for all sludge (or other waste) removed from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TAC § 335 and must include the following, as it pertains to wastewater treatment and discharge:

i. Volume of waste and date(s) generated from treatment process;
ii. Volume of waste disposed of on-site or shipped off-site;
iii. Date(s) of disposal;
iv. Identity of hauler or transporter;
v. Location of disposal site; and
vi. Method of final disposal.

The above records shall be maintained on a monthly basis. The records shall be retained at the facility site, or shall be readily available for review by authorized representatives of the TCEQ for at least five years.

12. For industrial facilities to which the requirements of 30 TAC § 335 do not apply, sludge and solid wastes, including tank cleaning and contaminated solids for disposal, shall be disposed of in accordance with THSC § 361.

SLUDGE PROVISIONS

The permittee is authorized to dispose of sludge only at a Texas Commission on Environmental Quality (TCEQ) authorized land application site or co-disposal landfill. **The disposal of sludge by land application on property owned, leased or under the direct control of the permittee is a violation of the permit unless the site is authorized with the TCEQ. This provision does not authorize Distribution and Marketing of sludge. This provision does not authorize land application of Class A Sludge. This provision does not authorize the permittee to land apply sludge on property owned, leased or under the direct control of the permittee.**

SECTION I. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE LAND APPLICATION

A. General Requirements

1. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC § 312 and all other applicable state and federal regulations in a manner that protects public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present in the sludge.

2. In all cases, if the person (permit holder) who prepares the sewage sludge supplies the sewage sludge to another person for land application use or to the owner or lease holder of the land, the permit holder shall provide necessary information to the parties who receive the sludge to assure compliance with these regulations.

3. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

B. Testing Requirements

1. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I [Toxicity Characteristic Leaching Procedure (TCLP)] or other method that receives the prior approval of the TCEQ for the contaminants listed in 40 CFR Part 261.24, Table 1. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal. Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Permitting and Remediation Support Division and the Regional Director (MC Region 11) within seven (7) days after failing the TCLP Test.

   The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 11) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

2. Sewage sludge shall not be applied to the land if the concentration of the pollutants exceeds the pollutant concentration criteria in Table 1. The frequency of testing for pollutants in Table 1 is found in Section I.C.

TABLE 1

Pollutant	Ceiling Concentration (Milligrams per kilogram)*
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
PCBs	49
Selenium	100
Zinc	7500

* Dry weight basis

3. Pathogen Control

All sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following methods to ensure that the sludge meets either the Class A or Class B pathogen requirements.

a. Six alternatives are available to demonstrate compliance with Class A sewage sludge. The first 4 options require either the density of fecal coliform in the sewage sludge be less than 1000 Most Probable Number (MPN) per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the sewage sludge be less than three MPN per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. Below are the additional requirements necessary to meet the definition of a Class A sludge.

Alternative 1 - The temperature of the sewage sludge that is used or disposed shall be maintained at or above a specific value for a period of time. See 30 TAC § 312.82(a)(2)(A) for specific information.

Alternative 2 - The pH of the sewage sludge that is used or disposed shall be raised to above 12 std. units and shall remain above 12 std. units for 72 hours.

The temperature of the sewage sludge shall be above 52° Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12 std. units.

At the end of the 72-hour period during which the pH of the sewage sludge is above 12 std. units, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

Alternative 3 - The sewage sludge shall be analyzed for enteric viruses prior to pathogen treatment. The limit for enteric viruses is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC § 312.82(a)(2)(C)(i-iii) for specific information. The sewage sludge shall be analyzed for viable helminth ova prior to pathogen treatment. The limit for viable helminth ova is less than one per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC § 312.82(a)(2)(C)(iv-vi) for specific information.

Alternative 4 - The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed.

Alternative 5 (PFRP) - Sewage sludge that is used or disposed of shall be treated in one of the processes to Further Reduce Pathogens (PFRP) described in 40 CFR Part 503, Appendix B. PFRP include composting, heat drying, heat treatment, and thermophilic aerobic digestion.

Alternative 6 (PFRP Equivalent) - Sewage sludge that is used or disposed of shall be treated in a process that has been approved by the U. S. Environmental Protection Agency as being equivalent to those in Alternative 5.

b. Three alternatives are available to demonstrate compliance with Class B criteria for sewage sludge.

Alternative 1

i. A minimum of seven random samples of the sewage sludge shall be collected within 48 hours of the time the sewage sludge is used or disposed of during each monitoring episode for the sewage sludge.

ii. The geometric mean of the density of fecal coliform in the samples collected shall be less than either 2,000,000 MPN per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

Alternative 2 - Sewage sludge that is used or disposed of shall be treated in one of the Processes to Significantly Reduce Pathogens (PSRP) described in 40 CFR Part 503, Appendix B, so long as all of the following requirements are met by the generator of the sewage sludge.

i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;

ii. An independent Texas Licensed Professional Engineer must make a certification to the generator of a sewage sludge that the wastewater treatment facility generating the sewage sludge is designed to achieve one of the PSRP at the permitted design loading of the facility. The certification need only be repeated if the design loading of the facility is increased. The certification shall include a statement indicating the design meets all the applicable standards specified in Appendix B of 40 CFR Part 503;

iii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established U. S. Environmental Protection Agency final guidance;

iv. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review; and

v. If the sewage sludge is generated from a mixture of sources, resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the PSRP, and shall meet the certification, operation, and record keeping requirements of this paragraph.

Alternative 3 - Sewage sludge shall be treated in an equivalent process that has been approved by the U. S. Environmental Protection Agency, so long as all of the following requirements are met by the generator of the sewage sludge.

i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;

ii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established U. S. Environmental Protection Agency final guidance;

iii. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review;

iv. The Executive Director will accept from the U. S. Environmental Protection Agency a finding of equivalency to the defined PSRP; and

v. If the sewage sludge is generated from a mixture of sources resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the Processes to Significantly Reduce Pathogens, and shall meet the certification, operation, and record keeping requirements of this paragraph.

In addition, the following site restrictions must be met if Class B sludge is land applied:

i. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.

ii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for 4 months or longer prior to incorporation into the soil.

iii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than 4 months prior to incorporation into the soil.

iv. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.

v. Animals shall not be allowed to graze on the land for 30 days after application of sewage sludge.

vi. Turf grown on land where sewage sludge is applied shall not be harvested for 1 year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn.

vii. Public access to land with a high potential for public exposure shall be restricted for 1 year after application of sewage sludge.

viii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge.

ix. Land application of sludge shall be in accordance with the buffer zone requirements found in 30 TAC § 312.44.

4. Vector Attraction Reduction Requirements

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following Alternatives 1 through 10 for vector attraction reduction.

Alternative 1 - The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38%.

Alternative 2 - If Alternative 1 cannot be met for an anaerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30° and 37° Celsius. Volatile solids must be reduced by less than 17% to demonstrate compliance.

Alternative 3 - If Alternative 1 cannot be met for an aerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge with percent solids of two percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20° Celsius. Volatile solids must be reduced by less than 15% to demonstrate compliance.

Alternative 4 - The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20° Celsius.

Alternative 5 - Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40° Celsius and the average temperature of the sewage sludge shall be higher than 45° Celsius.

Alternative 6 - The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali shall remain at 12 or higher for two hours and then remain at a pH of 11.5 or higher for an additional 22 hours at the time the sewage sludge is prepared for sale or given away in a bag or other container.

Alternative 7 - The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

Alternative 8 - The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials at the time the sludge is used. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

Alternative 9 - i. Sewage sludge shall be injected below the surface of the land.

ii. No significant amount of the sewage sludge shall be present on the land surface within one hour after the sewage sludge is injected.

iii. When sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

Alternative 10- i. Sewage sludge applied to the land surface or placed on a surface disposal site shall be incorporated into the soil within six hours after application to or placement on the land.

ii. When sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

C. Monitoring Requirements

Toxicity Characteristic Leaching Procedure (TCLP) Test - once during the term of this permit

PCBs - once during the term of this permit

All metal constituents and fecal coliform or Salmonella sp. bacteria shall be monitored at the appropriate frequency shown below, pursuant to 30 TAC § 312.46(a)(1):

Amount of sewage sludge (*) metric tons per 365-day period	Monitoring Frequency
0 to less than 290	Once/Year
290 to less than 1,500	Once/Quarter
1,500 to less than 15,000	Once/Two Months
15,000 or greater	Once/Month

(*) *The amount of bulk sewage sludge applied to the land (dry weight basis).*

Representative samples of sewage sludge shall be collected and analyzed in accordance with the methods referenced in 30 TAC § 312.7

SECTION II. REQUIREMENTS SPECIFIC TO BULK SEWAGE SLUDGE FOR APPLICATION TO THE LAND MEETING CLASS A or B PATHOGEN REDUCTION AND THE CUMULATIVE LOADING RATES IN TABLE 2, OR CLASS B PATHOGEN REDUCTION AND THE POLLUTANT CONCENTRATIONS IN TABLE 3

For those permittees meeting Class A or B pathogen reduction requirements and that meet the cumulative loading rates in Table 2 below, or the Class B pathogen reduction requirements and contain concentrations of pollutants below listed in Table 3, the following conditions apply:

A. Pollutant Limits

Table 2

Pollutant	Cumulative Pollutant Loading Rate (pounds per acre)*
Arsenic	36
Cadmium	35
Chromium	2677
Copper	1339
Lead	268
Mercury	15
Molybdenum	Report Only
Nickel	375
Selenium	89
Zinc	2500

Table 3

Pollutant	Monthly Average Concentration (milligrams per kilogram)*
Arsenic	41
Cadmium	39
Chromium	1200
Copper	1500
Lead	300
Mercury	17
Molybdenum	Report Only
Nickel	420
Selenium	36
Zinc	2800

*Dry weight basis

B. Pathogen Control

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, a reclamation site, shall be treated by either Class A or Class B pathogen reduction requirements as defined above in Section I.B.3.

C. Management Practices

1. Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other waters in the State.

2. Bulk sewage sludge not meeting Class A requirements shall be land applied in a manner which complies with the Management Requirements in accordance with 30 TAC § 312.44.

3. Bulk sewage sludge shall be applied at or below the agronomic rate of the cover crop.

4. An information sheet shall be provided to the person who receives bulk sewage sludge sold or given away. The information sheet shall contain the following information:

   a. The name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land.

   b. A statement that application of the sewage sludge to the land is prohibited except in accordance with the instruction on the label or information sheet.

   c. The annual whole sludge application rate for the sewage sludge application rate for the sewage sludge that does not cause any of the cumulative pollutant loading rates in Table 2 above to be exceeded, unless the pollutant concentrations in Table 3 found in Section II above are met.

D. Notification Requirements

1. If bulk sewage sludge is applied to land in a State other than Texas, written notice shall be provided prior to the initial land application to the permitting authority for the State in which the bulk sewage sludge is proposed to be applied. The notice shall include:

   a. The location, by street address, and specific latitude and longitude, of each land application site.

   b. The approximate time period bulk sewage sludge will be applied to the site.

   c. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk sewage sludge.

2. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

E. Record keeping Requirements

The sludge documents will be retained at the facility site and/or shall be readily available for review by a TCEQ representative. The person who prepares bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative for a period of five years. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC § 312.47 for persons who land apply.

1. The concentration (mg/kg) in the sludge of each pollutant listed in Table 3 above and the applicable pollutant concentration criteria (mg/kg), or the applicable cumulative pollutant loading rate and the applicable cumulative pollutant loading rate limit (lbs/ac) listed in Table 2 above.

2. A description of how the pathogen reduction requirements are met (including site restrictions for Class B sludge, if applicable).

3. A description of how the vector attraction reduction requirements are met.

4. A description of how the management practices listed above in Section II.C are being met.

5. The following certification statement:

   "I certify, under penalty of law, that the applicable pathogen requirements in 30 TAC § 312.82(a) or (b) and the vector attraction reduction requirements in 30 TAC § 312.83(b) have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices have been met. I am aware that there are significant penalties for false certification including fine and imprisonment."

6. The recommended agronomic loading rate from the references listed in Section II.C.3. above, as well as the actual agronomic loading rate shall be retained. The person who applies bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative indefinitely. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC § 312.47 for persons who land apply:

a. A certification statement that all applicable requirements (specifically listed) have been met, and that the permittee understands that there are significant penalties for false certification including fine and imprisonment. See 30 TAC § 312.47(a)(4)(A)(ii) or 30 TAC § 312.47(a)(5)(A)(ii), as applicable, and to the permittee's specific sludge treatment activities.

b. The location, by street address, and specific latitude and longitude, of each site on which sludge is applied.

c. The number of acres in each site on which bulk sludge is applied.

d. The date and time sludge is applied to each site.

e. The cumulative amount of each pollutant in pounds/acre listed in Table 2 applied to each site.

f. The total amount of sludge applied to each site in dry tons.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

F. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC Region 11) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division, by September 1 of each year the following information:

1. Results of tests performed for pollutants found in either Table 2 or 3 as appropriate for the permittee's land application practices.

2. The frequency of monitoring listed in Section I.C. that applies to the permittee.

3. Toxicity Characteristic Leaching Procedure (TCLP) results.

4. Identity of hauler(s) and TCEQ transporter number.

5. PCB concentration in sludge in mg/kg.

6. Date(s) of disposal.

7. Owner of disposal site(s).

8. Texas Commission on Environmental Quality registration number, if applicable.

9. Amount of sludge disposal dry weight (lbs/acre) at each disposal site.

10. The concentration (mg/kg) in the sludge of each pollutant listed in Table 1 (defined as a monthly average) as well as the applicable pollutant concentration criteria (mg/kg) listed in Table 3 above, or the applicable pollutant loading rate limit (lbs/acre) listed in Table 2 above if it exceeds 90% of the limit.

11. Level of pathogen reduction achieved (Class A or Class B).

12. Alternative used as listed in Section I.B.3.(a. or b.). Alternatives describe how the pathogen reduction requirements are met. If Class B sludge, include information on how site restrictions were met.

13. Vector attraction reduction alternative used as listed in Section I.B.4.

14. Annual sludge production in dry tons/year.

15. Amount of sludge land applied in dry tons/year.

16. The certification statement listed in either 30 TAC § 312.47(a)(4)(A)(ii) or 30 TAC § 312.47(a)(5)(A)(ii) as applicable to the permittee's sludge treatment activities, shall be attached to the annual reporting form.

17. When the amount of any pollutant applied to the land exceeds 90% of the cumulative pollutant loading rate for that pollutant, as described in Table 2, the permittee shall report the following information as an attachment to the annual reporting form.

    a. The location, by street address, and specific latitude and longitude.

    b. The number of acres in each site on which bulk sewage sludge is applied.

    c. The date and time bulk sewage sludge is applied to each site.

    d. The cumulative amount of each pollutant (i.e., pounds/acre) listed in Table 2 in the bulk sewage sludge applied to each site.

    e. The amount of sewage sludge (i.e., dry tons) applied to each site.

    The above records shall be maintained on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

SECTION III. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE DISPOSED IN A MUNICIPAL SOLID WASTE LANDFILL

A. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC § 330 and all other applicable state and federal regulations to protect public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present. The permittee shall ensure that the sewage sludge meets the requirements in 30 TAC § 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.

B. If the permittee generates sewage sludge and supplies that sewage sludge to the owner or operator of a municipal solid waste landfill (MSWLF) for disposal, the permittee shall provide to the owner or operator of the MSWLF appropriate information needed to be in compliance with the provisions of this permit.

C. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

D. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I (Toxicity Characteristic Leaching Procedure) or other method, which receives the prior approval of the TCEQ for contaminants listed in Table 1 of 40 CFR § 261.24. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal.

Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Permitting and Remediation Support Division and the Regional Director (MC Region 11) of the appropriate TCEQ field office within 7 days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 11) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year.

E. Sewage sludge shall be tested as needed, in accordance with the requirements of 30 TAC Chapter 330.

F. Record keeping Requirements

The permittee shall develop the following information and shall retain the information for five years.

1. The description (including procedures followed and the results) of all liquid Paint Filter Tests performed.

2. The description (including procedures followed and results) of all TCLP tests performed.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

G. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC Region 11) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 1 of each year the following information:

1. Toxicity Characteristic Leaching Procedure (TCLP) results.
2. Annual sludge production in dry tons/year.
3. Amount of sludge disposed in a municipal solid waste landfill in dry tons/year.
4. Amount of sludge transported interstate in dry tons/year.
5. A certification that the sewage sludge meets the requirements of 30 TAC § 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.
6. Identity of hauler(s) and transporter registration number.
7. Owner of disposal site(s).
8. Location of disposal site(s).
9. Date(s) of disposal.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

OTHER REQUIREMENTS

1. The permittee shall employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration according to the requirements of 30 TAC Chapter 30, Occupational Licenses and Registrations and in particular 30 TAC Chapter 30, Subchapter J, Wastewater Operators and Operations Companies.

   This Category C facility must be operated by a chief operator or an operator holding a Category B license or higher. The facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher. The licensed chief operator or operator holding the required level of license or higher must be available by telephone or pager seven days per week. Where shift operation of the wastewater treatment facility is necessary, each shift which does not have the on-site supervision of the licensed chief operator must be supervised by an operator in charge who is licensed not less than one level below the category for the facility.

2. The facility is not located in the Coastal Management Program boundary.

3. The permittee is hereby placed on notice that this permit may be reviewed by the TCEQ after the completion of any new intensive water quality survey on Segment No. 1434 of the Colorado River Basin and any subsequent updating of the water quality model for Segment No. 1434, in order to determine if the limitations and conditions contained herein are consistent with any such revised model. The permit may be amended, pursuant to 30 TAC § 305.62, as a result of such review. The permittee is also hereby placed on notice that effluent limits may be made more stringent at renewal based on, for example, any change to modeling protocol approved in the TCEQ Continuing Planning Process.

4. The permittee shall comply with the requirements of 30 TAC § 309.13 (a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC § 309.13(e).

5. The permittee shall provide facilities for the protection of its wastewater treatment facilities from a 100-year flood.

6. Prior to construction of the treatment facilities, the permittee shall submit to the TCEQ Wastewater Permitting Section (MC 148) a summary submittal letter in accordance with the requirements in 30 TAC Section 217.1. If requested by the Wastewater Permitting Section, the permittee shall submit plans, specifications and a final engineering design report which comply with 30 TAC Chapter 217, Design Criteria for Sewerage Systems. The permittee shall clearly show how the treatment system will meet the permitted effluent limitations required on Pages 2, 2a, and 2b of the permit.

7. Reporting requirements according to 30 TAC Sections 319.1-319.11 and any additional effluent reporting requirements contained in this permit are suspended from the effective date of the permit until plant startup or discharge, whichever occurs first, from the facility described by this permit. The permittee shall provide written notice to the TCEQ Regional Office (MC Region 11) and the Applications Review and Processing Team (MC 148) of the Water Quality Division at least forty-five (45) days prior to plant startup or anticipated discharge, whichever occurs first and prior to completion of each additional phase.

8. The permittee is hereby placed on notice that the Executive Director of the TCEQ will be initiating rulemaking and/or changes to procedural documents that may result in bacteria effluent limits and monitoring requirements for this facility.

9. Based on a settlement agreement entered into on August 31st 2006, the permittee shall equip the Wastewater Treatment Plant with an automated, on-site, standby generator with the capacity for immediate and automatic activation upon interruption of power to the plant or on-site lift stations.

Attachment B

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
2010 MAR 24 PM 2:13
CHIEF CLERKS OFFICE

TCEQ PERMIT NO. WQ0014548001

APPLICATION BY	§	**BEFORE THE**
130 CACTUS INVESTMENT, L.P.	§	**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 (Response) on the 130 Cactus Investment, L.P. (Cactus) application for a renewal of Texas Pollutant Discharge Elimination System (TPDES) permit no. WQ0014548001 and Executive Director's preliminary decision. As required by Title 30 of the Texas Administrative Code (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 comment letters and formal comments at the public meeting from the following persons: Representative Mark Strama, Werner Bockholt, James Dunklin (on behalf of St. John's United Church of Christ), Fancy Fairchild, Willard Hebbe, Kathy Henley, Hal Kuempel, James Kuempel, Larry Q. Mills, Sr., Christine Mills, Oscar and Renee Mitchell, Charles Mott, Vernagene Mott, Marilyn Samuelson (Vice President Blackland Prairie Concerned Citizens Association), Charles Sparks, Jr., Lexine Spillman, Ronald and Mary Ann Stone, Allen Vorwerk, James Whiteley, Kathleen Wolfer, and Sheralyn Wood. This Response addresses all such timely public comments received, whether or not withdrawn.

Access to Rules, Laws, and Records

Please consult the following websites to access the rules and regulations applicable to this permit:

- To access the Secretary of State website: www.sos.state.tx.us;
- For TCEQ rules in Title 30 of the Texas Administrative Code: www.sos.state.tx.us/tac/ (select "TAC Viewer" on the right, then "Title 30 Environmental Quality");
- For Texas statutes: www.capitol.state.tx.us/statutes/statutes.html;
- To access the TCEQ website: www.tceq.state.tx.us (for downloadable rules in WordPerfect or Adobe PDF formats, select "Rules, Policy, & Legislation," then "Rules and Rulemaking," then "Download TCEQ Rules");
- For Federal rules in Title 40 of the Code of Federal Regulations: www.epa.gov/epahome/cfr40.htm;
- For Federal environmental laws: www.epa.gov/epahome/laws.htm.

Commission records for this facility are available for viewing and copying and are located at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk). The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Pflugerville Community Library, 102 10th Street, Pflugerville, Texas.

BACKGROUND

Description of Facility

Cactus applied to the TCEQ for a renewal of TPDES Permit No. WQ0014548001, which would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day in the interim I phase, a daily average flow not to exceed 475,000 gallons per day in the interim II phase, and a daily average flow not to exceed 950,000 gallons

per day in the final phase. The wastewater treament plant (WWTP) would be an activated sludge process plant operated in the complete mix mode. Treatment units would include aeration basins, final clarifier, filters, sludge digester and chlorination chamber. The draft permit would authorize the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill. The WWTP has not been constructed. The WWTP would serve the proposed WildPflower development.

The effluent limitations in all phases of the draft permit, based on a 30 day average, are 5 milligrams per liter (mg/l) carbonaceous oxygen demand ($CBOD_5$), 5 mg/l total suspended solids (TSS), 2 mg/l ammonia nitrogen (NH_3-N), 1.0 mg/l total phosphorus. In the interim I and II phases the dissolved oxygen (DO) limit is 4.0 mg/l minimum, in the final phase the DO limit is 5.0 mg/l. In all 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.

The treated effluent would be discharged to an unnamed tributary; then to Wilbarger Creek; then to Colorado River Above La Grange in Segment No. 1434 of the Colorado River Basin. The unclassified receiving water uses are high aquatic life use for unnamed tributary and high aquatic life use for Wilbarger Creek. The designated uses for Segment No. 1434 are exceptional aquatic life use, public water supply, and contact recreation. The wastewater treatment plant will be located on a 20-acre tract on the south side of Jesse Bohls Road, 7,000 feet east of the Weiss lane intersection in Travis County, Texas 78660.

Procedural Background

The application for a permit renewal was received on June 2, 2009 and declared administratively complete on June 11, 2009. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on June 25, 2009 in the *Austin American Statesman*. The alternative language NORI was published in Spanish on July 2, 2009 in *lahora si!* The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on October 14, 2009 in the *Austin American Statesman*. The alternative language NAPD was published in Spanish on October 21, 2009 in *lahora si!* The Notice of Public Meeting was published on December 22, 2009 in the *Austin American-Statesman*. A public meeting was held in Pflugerville on January 25, 2010, the public comment period ended at the conclusion of the public meeting. 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:

Representative Mark Strama, Werner Bockholt, James Dunklin, Fancy Fairchild, Willard Hebbe, Hal Kuempel, Larry Q. Mills, Sr., Christine Mills, Oscar and Renee Mitchell, Charles Mott, Vernagene Mott, Marilyn Samuelson, Charles Sparks, Jr., Lexine Spillman, Ronald and Mary Ann Stone, Allen Vorwerk, James Whiteley, Kathleen Wolfer and Sheralyn Wood expressed concern about the continued need for the proposed plant and permit in light that the

development the proposed plant will serve has not been built and is in the service area of the proposed City of Pflugerville Regional Facility.

RESPONSE 1:

The Executive Director requires permittees to justify the need for a proposed permit. Tejas Viejo Land Company initially proposed a wastewater treatment plant with three phases, the largest phase being 950,000 gallons per day.[1] According to the initial application the WWTP will serve 2,285 Land Use Equivalents in the final phase. The Executive Director reviewed the requested final phase flow and the final size of the development and found that the wastewater treatment plant was sized appropriately.

The Executive Director evaluates need for any unbuilt phase at each permit action; therefore, applicants must provide a detailed discussion regarding the continued need for any phase that has been permitted for more than five years without being built. If an applicant fails to provide sufficient justification the Executive Director may recommend denial of the unbuilt phase or phases.

At the time Cactus applied for the renewal of its permit, none of the phases had been permitted for more than five years. According to its application, economic conditions have pushed back the initial time frame for the WildPflower development. Currently, Cactus estimates that it will begin construction of the interim I phase in April 2011, construction of interim II phase in April 2013 and begin construction of the final phase in April 2015. The

[1]The permit has been transferred to 130 Cactus Investment, L.P., see Response No. 13.

proposed City of Pflugerville Regional WWTP has not been permitted nor constructed, and at this time there is no guarantee that the regional WWTP will be permitted or built; therefore the Executive Director has determined that Cactus has a need for the proposed wastewater treatment plant and thus recommends the draft permit be issued.

COMMENT 2:

Charles Mott, Vernagene Mott and Sheralyn Wood expressed various concerns that the smaller WWTPs (such as the Cactus WWTP), tend to produce lower quality effluent and are more prone to unuathorized discharges than larger, regional WWTPs.

RESPONSE 2:

The effluent limits for the Cactus permit are among the most restrictive limits that TCEQ issues for wastewater permits regardless of the size or location of the WWTP. Because the WWTP is in the Colorado River basin, its effluent limits must comply with the stringent Colorado River Watershed Rules found in 30 TAC Chapter 311.

Additionally, Cactus is required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, Cactus must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, or retention of inadequately treated wastewater.

Cactus is also required to report any unauthorized discharge to the Executive Director within 24 hours. If there is an unauthorized discharge, the Executive Director and other local governmental entities will determine whether nearby residents need to be notified based on the

severity and potential health impact of the discharge. Failure to comply with TCEQ rules or the permit may subject Cactus to enforcement action.

Finally, the Executive Director conducts periodic inspections of wastewater facilities and also conducts investigations based on complaints received from the public. To report complaints about the facility, please contact the Austin Regional Office at 512-339-2929, 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 Cactus 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. For more information regarding enforcement, please see TCEQ's web site at www.tceq.state.tx.us/ and click on "Compliance, Enforcement and Cleanups."

COMMENT 3:

Charles Mott, Vernagene Mott and Sheralyn Wood expressed concern that a larger regional facility would be better maintained and more fully staffed and supervised.

RESPONSE 3:

TCEQ's regulations require that domestic wastewater treatment plants be operated and maintained by operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30. The Cactus facility (a class C facility) must be operated by a chief operator holding a Category B license or higher. The facility must be operated a minimum of five days per week by the operator and they must be available by telephone or pager seven days per week.

COMMENT 4:

Vernagene Mott asked why she was not notified of Cactus' TPDES permit renewal application in the same manner that she was for its new wastewater permit application.

RESPONSE 4:

The rules governing notice are slightly different for new permit applications, major amendment applications and renewal applications. For new permit and major amendment TPDES applications, notice is mailed to landowners located adjacent to the wastewater treatment plant site and landowners with property on either side of the receiving stream for approximately one mile downstream from the point of discharge. Notice is not mailed for renewal applications.

For all applications (new, major amendment, and renewal applications), the agency prepares two public notices; the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) and the Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD). Cactus is required to publish these notices in a local newspaper and to provide a copy of the application, proposed draft permit and Executive Director's Preliminary Decision in a public place for viewing and copying. As discussed, Cactus complied with all applicable notice requirements.

COMMENT 5:

James Dunklin, Christine Mills, Vernagene Mott, Ronald and Mary Ann Stone, Sheralyn Wood, and Allen Vorwerk expressed concern about the impact of the proposed WWTP treatment plant on wildlife, domestic animals, livestock, water quality, fishing and recreational uses of Wilbarger Creek.

RESPONSE 5:

The legislature has mandated that "[it] is the policy of this state . . . to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, and the operation of existing industries, taking into consideration the economic development of the state. . ."[2] The TCEQ implements this mandate by drafting effluent limits that will protect water quality.

The Executive Director determined that Wilbarger Creek has high aquatic life uses; therefore, the effluent limits were drafted to maintain and protect the high aquatic life uses. The Executive Director determined that if Cactus operates and maintains the facility as required by the proposed permit and regulations it will be protective of the environment, water quality, and human health. If you have any concerns or complaints about the WWTP, please contact the TCEQ at 512-339-2929 or 888-777-3186. Noncompliance with any permit provision may result in enforcement action against the Cactus.

COMMENT 6:

James Dunklin, Kathy Henley, James Kuempel, Vernagene Mott, and Ronald and Mary Ann Stone expressed concern that wastewater discharge from this plant would increase or cause flooding in the receiving stream.

RESPONSE 6:

TCEQ does not have jurisdiction to address flooding issues in the wastewater permitting

[2] Tex. Water Code § 26.003.

process. The wastewater 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 Cactus must meet even during rainfall events and periods of flooding. According to Cactus' application, the facility is located above the 100-year flood plain. Also, according to TCEQ's design criteria, a WWTP must have at least one all-weather access road with the driving surface situated above the 100-year flood plain. 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.

Additionally, the Cactus WWTP is permitted for an average daily flow of 950,000 gallons per day (gpd) in the final phase. At that 950,000 GPD, the WWTP would contribute 1.47 cubic feet per second (cfs) to any existing flow in Wilbarger Creek. This flow would be insignificant compared to overland flow during a significant rain event.

COMMENT 7:

James Dunklin, Vernagene Mott, and Ronald and Mary Ann Stone expressed concern about possible raw sewage spills.

RESPONSE 7:

Cactus is required to take steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, Cactus must maintain adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, or retention of inadequately treated wastewater.

The addition, the plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Executive Director.

Additionally, TCEQ's rules require that when the flow from a WWPT reaches 75 percent of the permitted daily average flow for three consecutive months, permittees must initiate engineering and financial planning for expansion or upgrade of the domestic wastewater treatment or collection facilities. When the flow reaches 90 percent of the permitted daily average flow for three consecutive months, permittees must obtain authorization from TCEQ to begin constructing the necessary additional treatment or collection facilities. These permit provisions are designed to help prevent unauthorized discharges of raw sewage. If an unauthorized discharge occurs, Cactus is required to report it to TCEQ within 24 hours. Finally, Cactus is subject to potential enforcement action for failure to comply with TCEQ rules or the permit.

COMMENT 8:

Vernagene Mott asked about the current 303(d) listing (listings of impaired reaches and segments) for Wilbarger Creek.

RESPONSE 8:

Segment No. 1434 is not currently listed on the State's inventory of impaired and threatened waters (the 2008 Clean Water Act § 303(d) list).

COMMENT 9:

James Dunklin, Larry Mills, Ronald and Mary Ann Stone, Kathleen Wolfer and Allen Vorwerk, are concerned about potential odor problems with the proposed treatment facilities.

RESPONSE 9:

Facilities that treat wastewater have the potential to generate odors. TCEQ's rules require that the Cactus meet one of three options to abate and control nuisance odor.[3] According to its permit application, Cactus will meet the buffer zone requirements by ownership.

If anyone experiences 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 the TCEQ Region 11 Office in Austin at (512) 339-2929.

Citizen complaints may also be filed on-line at http://www.tceq.state.tx.us/compliance/complaints/index.html. If Cactus fails to comply with all requirements of the permit, it may be subject to enforcement action.

In addition, the permit does not limit the ability of an individual to seek legal remedies against Cactus 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 10:

Vernagene Mott asked if the WWTP design is identical to the design submitted with the original permit application.

RESPONSE 10:

Because Cactus applied for a renewal of its existing permit, it was not required to submit

[3] 30 TAC § 309.13(e).

new design plans with the application. The draft permit, however, contains a requirement for the submission of a summary submittal letter to the Executive Director before construction begins on any of the phases. The summary letter must be signed and sealed by a licensed professional engineer and state that the proposed facility complies with the design criteria found in 30 TAC, Chapter 217. The existing permit referenced design criteria found in 30 TAC Chapter 317, however, since none of the phases have been constructed, the plans and specifications must conform to the new design criteria in 30 TAC Chapter 217.

COMMENT 11:

Vernagene Mott asked if statutory and regulatory guidelines were the only measures used in determining permit approval or were there other parameters.

RESPONSE 11:

The Executive Director's initial decision is based on statutory and regulatory requirements; however, staff also uses several guidance documents, including *Procedures to Implement the Texas Surface Water Quality Standards, Texas Commission on Environmental Quality* (January 2003) and *TNRCC Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits*, Document No. 98-001.000-OWR-WQ, (May 1998).

Additionally, TCEQ's rules provide a variety of mechanisms for public involvement in the permitting of WWTPs. First, the public has an opportunity to comment on all proposed draft

wastewater permits during the public comment period.[4] Second, the public may request a public meeting, reconsideration of the commission decision, or request a contested case hearing.[5] Third, if the permit is issued, anyone may contact the TCEQ either at 1-888-777-3186 to reach the appropriate TCEQ region office to express concerns over the operation of an existing wastewater treatment plant. Finally, citizens may gather data to show that a permittee is not in compliance with TCEQ's rules. For more information on citizen collected evidence, please go to the TCEQ web site at: http://www.tceq.state.tx.us/compliance/complaints/.

COMMENT 12:

Vernagene Mott asked if the current permit holder, 130 Cactus Investment, L.P., has included the settlement agreement with the former owner who received the original permit in its plans and renewal application.

RESPONSE 12:

Settlement agreements are typically not included as part of a TPDES permit. The parties to the settlement agreement may have continuing obligations.

COMMENT 13:

Vernagene Mott asked what the relationship is between 130 Cactus Investment, L.P. and Tejas Viejo Land Company with regard to this permit and the WWTP.

RESPONSE 13:

[4] 30 TAC § 55.152.
[5] 30 TAC § 55.201.

The Executive Director is unaware of the legal relationship (if any) between 130 Cactus Investment, L.P. and Tejas Viejo Land Company. The permit initially issued to Tejas Viejo Land Company was transferred to 130 Cactus Investment, L.P. TCEQ's rules allow the transfer of a permit from one entity to another, provided certain information is provided.[6] On December 17, 2007, 130 Cactus Investment, L.P. submitted an application to transfer TPDES Permit No. WQ0014548001 from Tejas Viejo Land Company to 130 Cactus Investment, L.P. The Executive Director approved the transfer on January 21, 2008.

COMMENT 14:

Werner Bockholt, Willard Hebbe, Charles Mott, Vernagene Mott, Marilyn Samuelson, Charles Sparks, Jr. stated that the WildPflower subdivision is in the City of Pflugerville's extraterritorial jurisdiction.

RESPONSE 14:

The WildPflower subdivision is in the City of Pflugerville's extraterritorial jurisdiction; however, Travis County Municipal Utility District Number 17 currently has a certificate of convenience and necessity to serve the subdivision.

COMMENT 15:

Kathleen Wolfer expressed concern over degradation of Wilbarger Creek from the increase in nutrients.

RESPONSE 15:

[6] 30 TAC § 305.64.

The draft permit was developed in accordance with the Texas Surface Water Quality Standards.[7] These standards are designed to maintain the quality of water in the state and to be protective of human health and the environment, including nutrient concerns in the receiving waters. The draft permit includes effluent limitations and monitoring requirements designed to ensure that the effluent meets TSWQS.

Nutrient loading from wastewater discharges to fresh water bodies are typically addressed through phosphorus control. The existing and draft permits have a Total Phosphorus effluent limit of 1 mg/l (approximately 1 part per million) as required by 30 TAC § 311.43(a).

COMMENT 16:

Vernagene Mott asked if it is preferable to have a regional WWTP or a smaller package plant and if the quality of supervision is better in a regional WWTP or in a smaller package plant.

RESPONSE 16:

The Executive Director is not in a position to give a universal response to this comment because there are many factors that impact the decision on whether it is or would be preferable to have a regional wastewater provider over several small WWTPs. Likewise there are many factors that impact the quality of supervision at any WWTP.

While it is the TCEQ's policy to encourage and promote the development and use of regional WWTPs,[8] the Executive Director does not mandate the type of WWTP that should be

[7] The Texas Surface Water Quality Standards are found in 30 TAC Chapter 307.
[8] TWC § 26.081.

used by any given applicant. The Executive Director evaluates applications for WWTPs, based on the information provided in the application. As discussed above in Response 2, the effluent limits for the Cactus WWPT are some of the most stringent in the state.

Plant supervision is determined by the type of treatment and plant size. The Cactus WWTP shall employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid Category B license or higher. The Cactus facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher. The licensed chief operator or operator holding the required level of license or higher must be available by telephone or pager seven days per week.

COMMENT 17:

Vernagene Mott asked if a back-up generator would be good for the environment.

RESPONSE 17:

A back-up generator can be helpful in some circumstances; however, an on-site, automatically starting generator is only required for new WWTPs if the Executive Director determines that the power supply is unreliable.[9]

Because of an agreement, dated August 31st, 2006 between Vernagene Mott, Charles Mott and Tejas Viejo Land Company, Other Requirement No. 9 has been added to the draft permit.[10] This other requirement requires Cactus to equip the WWTP with an automated, on-

[9] 30 TAC § 217.36(c).
[10] Tejas Viejo Land Company was the original permittee.

site, standby generator with the capacity for immediate and automatic activation upon interruption of power to the plant or on-site lift stations.

COMMENT 18:

Vernagene Mott asked why a small WWTP should be built if the City of Pflugerville has existing capacity.

RESPONSE 18:

As part of the permitting process applicants are required to provide the Executive Director with documentation that they attempted to obtain service from all existing WWTPs within a three-mile radius of the location of the proposed WWPT. The only WWTP within three miles of the proposed location of the Cactus WWPT is the City of Pflugerville's WWTP. The City of Pflugerville indicated that it did not have capacity to accept the final permitted flow from the WildPflower Development.

COMMENT 19:

Christine Mills stated that it would be better for the environment to require houses to be built on one-acre lots with septic systems that would not use electricity, chemicals, or require maintenance. Additionally, according to Larry and Christine Mills this approach would prevent air and water pollution and would not increase taxes.

RESPONSE 19:

Wastewater treatment plants typically provide superior treatment of raw sewage than septic tanks. To meet its effluent limits, Cactus' WWTP will have to provide secondary

treatment involving disinfection. For a proposed development of this type, a WWTP will provide a higher level of environmental protection than septic tanks.

COMMENT 20:

James Dunklin asked if the Cactus WWTP will go beyond the TCEQ's requirements to be good environmental stewards.

RESPONSE 20:

Permittees are required to comply with all statutory and regulatory requirements. TCEQ does not have authority to require permittees to go beyond the statutory and regulatory requirements.

COMMENT 21:

James Dunklin asked what studies had been done.

RESPONSE 21:

In September 2004, a Receiving Water Assessment (RWA) was conducted on upper Wilbarger Creek. The purpose of the study was to collect information to assist in determining the appropriate aquatic life use and dissolved oxygen criteria for certain areas of Wilbarger Creek. The results of the study were incorporated into the review of the permit application. An "intensive survey" was also performed on Wilbarger Creek in July 2006. The purpose of this survey was to collect information to use to refine the dissolved oxygen model for Wilbarger Creek. However, due to extreme low-flow conditions, punctuated by rain events that caused flows in the creek to become non-steady-state, this information was not usable for model refinement.

COMMENT 22:

James Dunklin and Kathy Henley expressed concern about possible stream erosion from the treated wastewater discharge.

RESPONSE 22:

The water quality permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. Downstream erosion is not typically addressed in the wastewater permitting process.

The proposed final phase flow of 950,000 gallons per day (gpd), which is equal to a flow of 1.47 cubic feet per second (cfs) will have a velocity that is less than the minimum scouring velocity used in the design of sewer lines, *i.e.*, 2 cfs. Therefore, TCEQ does not anticipate that the discharge of wastewater at the final phase flow will contribute to surface erosion.

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 23:

Vernagene Mott asked if small WWTPs or regional WWTPs are more economic for citizens over a three to five year time frame.

Vernagene Mott expressed concern about the re-alignment of Jesse Bohls road.

Vernagene Mott, Kathy Henley and Allen Vorwerk expressed concern about sludge trucks, safety and increased traffic.

Sheralyn Wood expressed concern that the smaller plant would waste taxpayer money and duplicate services.

Vernagene Mott asked if the Developer wanted to get out of the wastewater treatment business, who it would expect to sell the WWTP to.

Vernagene Mott asked what the role of the WWTP would be in the next decade.

Vernagene Mott asked what the fiscal impact would be of building the Cactus WWTP then transferring service to the regional facility.

Vernagene Mott asked what profit the Developer hopes to achieve, and if all the transactions would be transparent.

Vernagene Mott asked which type of WWTP is the most economical, a regional WWTP or a smaller package plant.

Larry Mills asked if a plat for the subdivision had been filed with the City of Pflugerville.

Larry Mills and Willard Hebbe stated that the only reason that Cactus applied for a renewal of its permit is to enhance the value of its property.

Willard Hebbe asked how much of the development Cactus actually owns and if its existing contracts are valid.

Kathleen Wolfer expressed concern that the quality of life of area residents would be negatively impacted by the Cactus WWTP.

RESPONSE 23:

The permitting process is intended to control the discharge of pollutants into water in the state and to protect the water quality of the state's rivers, lakes and coastal waters. TCEQ does not have jurisdiction to address concerns such as those listed in Comment 23 above in the wastewater permitting process.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

Based upon comments received the following changes have been made to the draft permit:

1) Other Requirement No. 9 has been added. Other Requirement No. 9 reads as follows: Based on a settlement entered into on August 31st 2006, the permittee shall equip the Wastewater Treatment Plant with an automated, on-site, standby generator with the capacity for immediate and automatic activation upon interruption of power to the plant or on-site lift stations.

2) Based on comments received, this category C facility must be operated by an operator with Category B license or higher.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division

Kathy J. Humphreys, Staff Attorney
Environmental Law Division
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Attachment C

Compliance History Report

Customer/Respondent/Owner-Operator:	CN603432329	130 CACTUS INVESTMENT, LP	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN104370226	WILDPFLOWER WWTP	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01

ID Number(s):	WASTEWATER	EPA ID	TX0127001
	WASTEWATER	PERMIT	WQ001454800

Location: A 130 acre tract of land on the south side of Jesse Bohls Road, 7000 ft east of the Weiss Lane intersection

TCEQ Region: REGION 11 - AUSTIN

Date Compliance History Prepared: May 19, 2010

Agency Decision Requiring Compliance History: Enforcement

Compliance Period: June 02, 2004 to June 02, 2009

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Staff Name Phone: 239 - 1000

Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? Yes
2. Has there been a (known) change in ownership/operator of the site during the compliance period? Yes
3. If Yes, who is the current owner/operator? OWNOPR 130 CACTUS INVESTMENT, LP
4. if Yes, who was/were the prior owner(s)/operator(s) ? OWN Tejas Viejo Land Company
5. When did the change(s) in owner or operator occur? 11/22/2008 OWN Tejas Viejo Land Company
6. Rating Date: 9/1/2009 Repeat Violator: NO

Components (Multimedia) for the Site :

A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

N/A

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

N/A

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

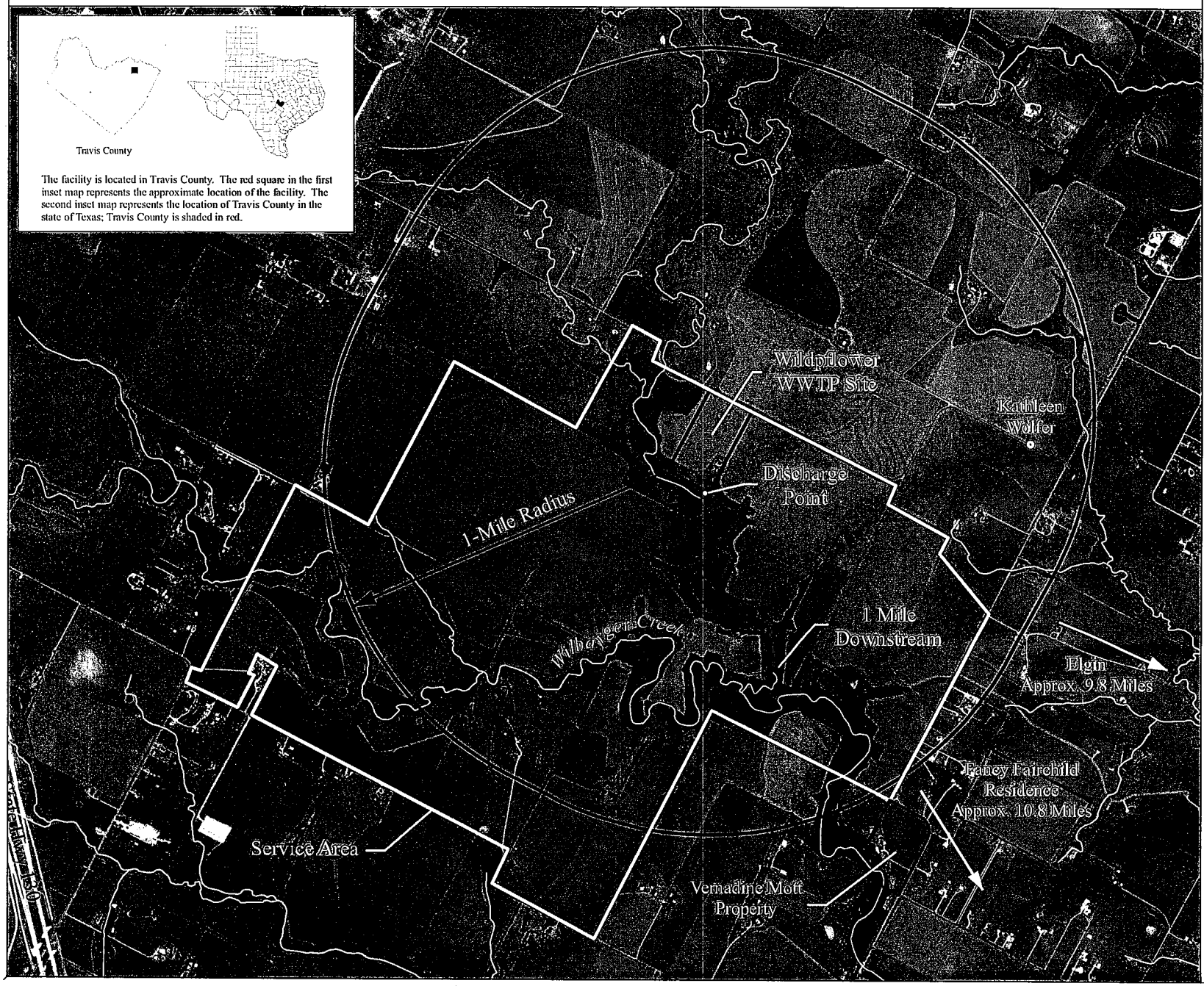
N/A

Sites Outside of Texas

N/A

Attachment D

130 Cactus Investment, LP
TPDES Permit No. WQ0014548001
Map Requested by TCEQ Office of Legal Services for Commissioners' Agenda



Protecting Texas by Reducing and Preventing Pollution

TCEQ

Texas Commission on Environmental Quality
GIS Team (Mail Code 197)
P.O. Box 13087
Austin, Texas 78711-3087

May17. 2010

0 0.1 0.2 0.4 0.6 Miles

Projection: Texas Statewide Mapping System (TSMS)
Scale 1:26,000

Legend
- WWTP Site
- Service Area
- Requestor's Property
- Requestor's Property

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The vector data are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a one-half meter photograph from the 2008 Texas Orthoimagery Project.

This map depicts the following:
(1) The approximate location of the site. This is labeled "Wildpflower WWTP Site".
(2) Circle and arrow depicting 1-mile radius. This is labeled "1-Mile Radius".
(3) Discharge point. This is labeled "Discharge Point".
(4) Requestor's residence. This is labeled with requestor's name.
(5) Service area. This is labeled "Service Area".

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

M McDonough CRF-323880