

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 26, 2010

TO: Persons on the attached mailing list.

RE: 130 Cactus Investment, LP
TPDES Permit No. WQ0014548001

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Pflugerville Community Library, 102 10th Street, Pflugerville, Texas 78660.

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

How To Request a Contested Case Hearing.

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

The request must include the following:

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

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

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

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

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

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

Deadline for Submitting Requests.

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

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

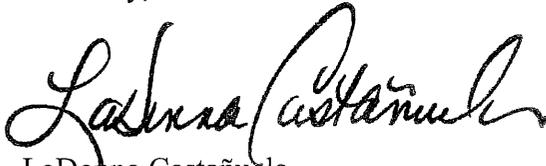
Processing of Requests.

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

How to Obtain Additional Information.

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

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/lg

Enclosures

MAILING LIST
for
130 Cactus Investment, LP
TPDES Permit No. WQ0014548001

FOR THE APPLICANT:

Irma Speers
130 Cactus Investment, LP
2207 Lake Austin Boulevard
Austin, Texas 78703-4547

James A. Huff, Jr.
Pape-Dawson Engineers
7800 Shoal Creek Boulevard
Austin, Texas 78757-1098

PROTESTANTS/INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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

Larry Diamond, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

LaDonna Castañuela
Texas Commission on Environmental Quality
Office of Chief Clerk MC-105
P.O. Box 13087
Austin, Texas 78711-3087

BOCKHOLT , WERNER
PO BOX 140242
AUSTIN TX 78714-0242

COLVIN , CHUCK & TRACEE
12000 BRITA OLSON
MANOR TX 78653-3606

DUNKLIN , JAMES
PO BOX 903
PFLUGERVILLE TX 78691-0903

FAIRCHILD , FANCY
8802 UNICE DR
ELGIN TX 78621-9222

FARB , LORETTA
TRAVIS COUNTY
PO BOX 1748
AUSTIN TX 78767-1748

GOSS , DUSTIN
7705 BLUE LILLY DR
AUSTIN TX 78759-6407

HEBBE , WILLARD
PO BOX 458
PFLUGERVILLE TX 78691-0458

HEES , KERMIT
19742 ENGELMANN LN
MANOR TX 78653-3555

HENLEY , KATHY
10801 SCHMIDT LN
MANOR TX 78653-3595

KUEMPEL , HAL
238 NEW MEISTER LN
PFLUGERVILLE TX 78660

KUEMPEL , HAL
PO BOX 266
PFLUGERVILLE TX 78691-0266

KUEMPEL , JAMES
UNIT B
17409 CAMERON RD
PFLUGERVILLE TX 78660-8962

MILLS , CHRISTINE
16930 CAMERON RD
PFLUGERVILLE TX 78660-8911

MILLS , CHRISTINE & LARRY
16930 CAMERON RD
PFLUGERVILLE TX 78660-8911

MILLS SR , LARRY Q
16930 CAMERON RD
PFLUGERVILLE TX 78660-8911

MITCHELL , OSCAR & RENEE
PO BOX 2918
PFLUGERVILLE TX 78691-2918

MORTON , STEPHEN
16928 CAMERON RD
PFLUGERVILLE TX 78660-8911

MOTT , CHARLES
PO BOX 951
PFLUGERVILLE TX 78691-0951

MOTT , VERNAGENE
PO BOX 951
PFLUGERVILLE TX 78691-0951

REA , WAYNE SANDY
TEJAS VIEJO LAND COMPANY
PO BOX 31900
HOUSTON TX 77231-1900

SAMUELSON , MS MARILYN
14914 SVENSKA RD
COUPLAND TX 78615-4874

SPARKS , CHARLES
16712 CAMERON RD
PFLUGERVILLE TX 78660-8910

SPILLMAN , LEXINE
5300 FM 1327
CREEDMOOR TX 78610-9645

SPILLMANN , LEXINE
5300 FM 1327
CREEDMOOR TX 78610-9645

STONE , MARY & RONALD E
16766 CAMERON RD
PFLUGERVILLE TX 78660-8910

STRAMA , THE HONORABLE MARK
TEXAS HOUSE OF REPRESENTATIVES - DIST 50
PO BOX 2910
AUSTIN TX 78768-2910

STROZEWSKI , DARREN
CITY OF PFLUGERVILLE
9015 MOUNTAIN RIDGE DR STE 120
AUSTIN TX 78759-8486

VORWERK , ALLEN
7404 JESSE BOHLS DR
PFLUGERVILLE TX 78660-8918

VORWERK , ALLEN
6902 JESSE BOHLS DR
PFLUGERVILLE TX 78660-8953

WEBB , WILEY
3801 COUNTY ROAD 200
LIBERTY HILL TX 78642-3827

WEISS, H & MERLE
17500 WEISS LN
PFLUGERVILLE TX 78660-8906

WHITELEY, JAMES
16516 CAMERON RD
PFLUGERVILLE TX 78660-8915

WOLFER, KATHLEEN
8502 JESSE BOHLS DR
PFLUGERVILLE TX 78660-8918

WOOD, SHERALYN
7921 SENDERO RIDGE DR
FAIR OAKS RANCH TX 78015-4755

TCEQ PERMIT NO. WQ0014548001

APPLICATION BY

130 CACTUS INVESTMENT, L.P.

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§
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BEFORE THE

TEXAS COMMISSION

ENVIRONMENTAL QUALITY

2010 MAR 24 PM 2:13
CHIEF CLERKS OFFICE

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 treatment 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 (CBOD₅), 5 mg/l total suspended solids (TSS), 2 mg/l ammonia nitrogen (NH₃-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

¹The 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 unauthorized 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:

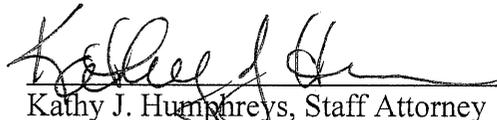
- 1) Other Requirement No. 9 has been added. Other Requirement No. 9 reads as follows: Based on a settlement entered into on August 31st 2006, the permittee shall equip the Wastewater Treatment Plant with an automated, on-site, standby generator with the capacity for immediate and automatic activation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