

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

December 13, 2010

TO: Persons on the attached mailing list.

RE: Lower Colorado River Authority
TPDES Permit No. WQ0014404001

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 Nature Center, Matagorda Nature Park, 6420 Farm-to-Market Road 2031, Matagorda, Texas.

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

How To Request a Contested Case Hearing.

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

The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and

- (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

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

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

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

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

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

Deadline for Submitting Requests.

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

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

Processing of Requests.

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

How to Obtain Additional Information.

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

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/er

Enclosure

MAILING LIST
for
Lower Colorado River Authority
TPDES Permit No. WQ0014404001

FOR THE APPLICANT:

Kyle Jensen
Lower Colorado River Authority
P.O. Box 220
Austin, Texas 78767-0220

Gloria Broussard
Lower Colorado River Authority
Building 1, Suite 150
11612 Bee Caves Road
Austin, Texas 78738

PROTESTANTS/INTERESTED
PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Celia Castro, Staff Attorney
Texas Commission on Environmental
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Donald Camp, Technical Staff
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FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

Bridget Bohac, Director
Texas Commission on Environmental
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Office of Public Assistance MC-108
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FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental
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FOR THE CHIEF CLERK
via electronic mail:

LaDonna Castañuela
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Office of Chief Clerk MC-105
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AUSTIN TX 78757-2408

GRIFFITH, ANDREW
APT 3417
5555 E MOCKINGBIRD LN
DALLAS TX 75206-5364

HUTSON, SUSIE
11696 STATE HIGHWAY 60 S
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POTTHOFF, RICK
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SULLIVAN, JULIE
PO BOX 44
COLLEGEPORT TX 77428-0044

TPDES PERMIT NO. WQ0014404001

2010 DEC -8 PM 4:38

APPLICATION BY	§	BEFORE THE
	§	CHIEF CLERKS OFFICE
LOWER COLORADO RIVER	§	TEXAS COMMISSION ON
	§	
AUTHORITY	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the application by Lower Colorado River Authority (Applicant or LCRA) for renewal of a Texas Pollutant Discharge Elimination System (TPDES) permit, No. WQ0014404001, and the ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) § 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk received timely filed comment letters from the following persons: Beverly Cain; Julie Sullivan; Rick Potthoff; Andrew Griffith; Lance Cain; Alexis Boxer; and Susie Hutson. (The comments from Julie Sullivan, Rick Potthoff, Lance Cain, Alexis Bower, and Susie Hutson all referred to another TPDES Permit, No. WQ0004882000, which concerns the **White Stallion Energy Center** facility. Andrew Griffith did not specify which permit he was protesting. Beverly Cain specifically named the Applicant's **Matagorda Bay** facility in her comments).

This Response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the

wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The Applicant has applied for a renewal of TPDES Permit No. WQ0014404001, that would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day (gpd). The wastewater treatment facility serves the Matagorda Bay Nature Park and Preserve. The facility is located approximately 2,700 feet east of Farm-to-Market Road 2031 (Beach Road) and approximately 1,200 feet north of the Gulf of Mexico in Matagorda County, Texas.

The Matagorda Bay Nature Park and Preserve Wastewater Treatment Facility (Matagorda Bay WWTF) is an activated sludge process plant operated in the extended aeration mode. Treatment units include a bar screen, aeration basin, final clarifier, chlorine contact chamber, sludge digester, and sludge holding tank. The facility is currently in operation.

The effluent limitations in the draft permit, based on a 30-day average, are 10 mg/l five-day Biochemical Oxygen Demand (BOD₅), 15 mg/l Total Suspended Solids (TSS), 35 Enterococci Colony Forming Units (CFU) or Most Probable Number (MPN) per 100 ml, and 4 mg/l minimum dissolved oxygen (DO). 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 is discharged to Colorado River Tidal in Segment No. 1401 of the Colorado River Basin. The designated uses for Segment No. 1401 are high aquatic life use and contact recreation. Segment No. 1401 is currently listed on the State's inventory of impaired and threatened waters, the 2008 303(d) list and the Draft 2010 303(d) list, for bacteria from the confluence with the Gulf of Mexico in Matagorda County to a point 1.3 miles downstream of the Missouri-Pacific Railroad in Matagorda County. This is a renewal application for a public domestic wastewater treatment facility and should not contribute to the impairment of this segment. To ensure disinfection, an effluent limitation for Enterococci bacteria has been added to the permit. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

Procedural Background

TCEQ received the application for a permit renewal on June 1, 2010 and declared it administratively complete on June 29, 2010. The Applicant published the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) in English on July 8, 2010 in the *Matagorda Advocate* and in Spanish on July 21-27, 2010 in *La Neta*. The Applicant published the Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit in English on September 23, 2010 in the *Matagorda Advocate* and in Spanish on September 22-28, 2010 in *La Neta*. The public comment period ended on October 25, 2010. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

Access to Rules, Laws and Records

The following websites may be useful:

Secretary of State website for all administrative rules: www.sos.state.tx.us

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")

Texas statutes: <http://www.statutes.legis.state.tx.us/>

TCEQ website: <http://www.tceq.state.tx.us/rules/index.html>

(for downloadable rules in Microsoft Word or Adobe PDF formats, select "Rules, Policy, & Legislation," then "Rules and Rulemaking," then "Download TCEQ Rules")

Federal rules in Title 40 of the Code of Federal Regulations:

<http://www.epa.gov/lawsregs/search/40cfr.html>

Federal environmental laws: <http://www.epa.gov/lawsregs/>

Commission records for this facility are available for viewing and copying at TCEQ's main office in Austin, 12100 Park 35 Circle, Building E, Room 103 (Central Records, for existing or past permits), or Building F, 1st Floor (Office of the Chief Clerk, for the current application until final action is taken), and at TCEQ's Region 12 Office in Houston at 5425 Polk Avenue, Houston, Texas. The application for this facility has been available for viewing and copying at Matagorda Nature Park, Nature Center, 6420 Farm-to-Market Road 2031, Matagorda, Texas since publication of the NORI. The permit application, draft permit, statement of basis/technical summary, and ED's preliminary decision have been available for viewing and copying at the same location since publication of the NAPD.

COMMENTS AND RESPONSES

COMMENTS REGARDING WHITE STALLION:

Julie Sullivan, Rick Potthoff, Lance Cain, and Alexis Boxer expressed concern about the effects that the wastewater discharge from the White Stallion coal plant would have on Matagorda Bay. Susie Hutson also voiced concern about the negative impact that the White Stallion plant would have on water quality for downstream and adjacent

landowners. Rick Potthoff was concerned that the White Stallion facility would discharge heavy metals, especially mercury, into surrounding waterways and the bay, eventually affecting seafood sources. Rick Potthoff was concerned about the effect that the White Stallion plant will have on wild birds in the area, especially migratory and marine birds. Susie Hutson was also concerned with White Stallion's potential impact on wildlife living on or near the Colorado River.

RESPONSE TO WHITE STALLION COMMENTS:

TPDES Permit No. WQ0014404001 is the application by the LCRA for a renewal of an existing domestic wastewater permit for the Matagorda Bay WWTF. The application by White Stallion Energy Center, LLC (White Stallion) for proposed TPDES Permit No. WQ0004882000 is for a new permit for industrial wastewater discharge. This Response can only address concerns with the Matagorda Bay WWTF. Specific responses to concerns regarding the proposed White Stallion permit (if designated as such) will be addressed in that Response to Comments. TCEQ's Office of Public Assistance gave these five individuals instructions on how to comment on the correct permit by referencing the appropriate permit number.

COMMENTS REGARDING MATAGORDA BAY:

Andrew Griffith and Beverly Cain requested a public meeting and contested case hearing. Andrew Griffith stated that these venues would result in both educating the general public as to the possible detrimental environmental effects of the proposed permit and a more thorough study of its ramifications. Beverly Cain stated that she is a regular visitor to the Matagorda Bay area and a part-time retiree whose in-laws built a cabin in the area.

RESPONSE TO MATAGORDA BAY COMMENTS:

TCEQ's rules provide a variety of mechanisms for public involvement in the permitting of wastewater treatment plants. First, the public has an opportunity to comment on all proposed draft wastewater permits during the public comment period. Second, the public may request reconsideration of the commission decision or request a contested case hearing.¹ Third, anyone may contact the TCEQ either at 1-888-777-3186 to reach the appropriate TCEQ region office or by e-mail at complaint@TCEQ.state.tx.us to express concerns over the operation of an existing wastewater treatment plant. Finally, citizens may gather data to show that an Applicant is not in compliance with TCEQ's rules. For more information on citizen collected evidence, please visit the TCEQ web site at <http://www.tceq.state.tx.us/compliance/complaints/>.

A public meeting is held if there is substantial public interest or if a member of the legislature requests one.² A public meeting has two purposes, first to provide the public an opportunity to ask questions and second to provide the ED with additional information regarding the proposed permit. A public meeting is divided into two sections, an informal section and a formal section. During the informal section, the public can ask questions of the Applicant and the ED, which will be answered at the meeting. During the formal section, the public may make comments or ask questions which will be responded to in writing in the ED's Response to Comments. In this instance, the ED decided that the number and nature of the comments did not meet the criteria to hold a public meeting.

¹ 30 TAC § 55.201

² 30 TAC § 55.154.

The regulations governing requests for contested case hearings are found at 30 TAC, Chapter 55. In addition, Texas Water Code (TWC) § 26.028(d) and 30 TAC § 55.201(i) provide that no right to a hearing exists for certain water quality discharge permits. These authorizations include applications to renew or amend a permit under Chapter 26 of the TWC if:

- (A) the applicant is not applying to:
 - (i) increase significantly the quantity of waste authorized to be discharged; or
 - (ii) change materially the pattern or place of discharge;
- (B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (C) any required opportunity for public meeting has been given;
- (D) consultation and response to all timely received and significant public comment has been given; and
- (E) 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;

30 TAC§55.201(i)(5).

This renewal application for a wastewater discharge permit issued under Chapter 26 of the TWC meets these criteria. The facility has been in operation since 2006. The Applicant has not applied to increase the quantity of waste authorized to be discharged or to change the point of discharge. The effluent limitations in the renewal permit will maintain the quality of the discharged waste. There were requests for a public meeting, but they did not meet the criteria required to conduct a public meeting. The objective of this Response is to address all timely public comments. The compliance history beginning five years prior to the submission of its renewal application until the present raises no significant issues regarding the Applicant's ability to comply with a material term of the permit. A July 2010 report from a Region 12 investigator states that there

are no issues or outstanding problems with this facility and that all violations have been resolved. The compliance history is Average and raises no issues regarding the Applicant's ability to comply with a material term of the permit.

As part of the permit application process, the ED determines the uses of the receiving water and sets effluent limits that are protective of those uses. The draft permit includes effluent limitations and monitoring requirements to ensure that the proposed effluent limits will not violate the Texas Surface Water Quality Standards (TSWQS) for the protection of surface water, groundwater, aquatic and terrestrial life, and human health. It also includes additional requirements for the wastewater treatment system to ensure the protection of water quality and human health; and for the disposal of domestic sludge generated from the wastewater treatment facility. The designated uses for Segment No. 1401 are high aquatic life use and contact recreation.

The 2008 Texas 303(d) list and the Draft 2010 Texas 303(d) list, the State's inventory of impaired and threatened waters, currently list Segment No. 1401 for bacteria from the confluence with the Gulf of Mexico in Matagorda County to a point 1.3 miles downstream of the Missouri-Pacific Railroad in Matagorda County. This is a renewal application for a public domestic wastewater treatment facility and should not contribute to the impairment of this segment. To ensure disinfection, an effluent limitation for Enterococci bacteria with once per quarter monitoring has been added to the permit based on updates to 30 TAC Chapter 319 and 309.

Effluent discharged into water in the state from facilities regulated under the Texas Pollution Discharge Elimination System is required to meet Texas Surface Water Quality Standards (TSWQS). The TSWQS and other applicable rules are protective of

aquatic life, human health, and the environment including the designated uses of the receiving waters. The draft permit for the facility meets the requirements of the TSWQS. The TCEQ does not anticipate that constituents in the discharge will have an adverse effect on the receiving water or its designated uses. The effluent limitations in the draft permit are designed to maintain and protect the existing instream uses. The advanced treatment levels that apply to the proposed discharge are expected to maintain the water quality and protect the existing instream uses. The draft permit includes effluent limitations and monitoring requirements for BOD₅, TSS, Enterococci bacteria, chlorine residual, and pH to ensure that the proposed effluent limits will not result in a violation of TSWQS for the protection of surface water quality, groundwater, and human health. It also includes additional requirements for the wastewater treatment system to ensure the protection of water quality and human health and for the disposal of domestic sludge generated from the wastewater treatment facility.

If TCEQ issues this permit renewal, the use and enjoyment of surface waters should not be negatively impacted by the discharge if it is treated according to the effluent limits in the draft permit. According to the TSWQS, “[w]ater in the state shall be maintained to preclude adverse toxic effects on human health resulting from contact recreation, consumption of aquatic organisms, consumption of drinking water or any combination of the three.”³ Additionally, “[w]ater in the state shall be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, or domestic animals resulting from contact, consumption of aquatic organisms, consumption of

³ 30 TAC Section 307.6 (b)(3).

water, or any combination of the three.”⁴ The treated effluent will be disinfected to protect human health and required not to exceed the maximum chlorine residual to protect aquatic life.

Based on the facts listed above, the ED determined that the draft permit for the Matagorda Bay Nature Park and Preserve Wastewater Treatment Facility is protective of the environment, water quality, and human health and that it meets TCEQ rules and requirements if the Applicant operates and maintains the facility as required by the proposed permit and regulations. If nearby residents experience any 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 12 Office in Houston at (713) 767-3500. Citizen complaints may also be filed on-line at <http://www.tceq.state.tx.us/compliance/complaints/index.html>. If the Applicant fails to comply with any requirement of the permit, the facility may be subject to administrative enforcement action, fines, and other penalties.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

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

⁴ 30 TAC Section 307.6 (b)(4).

Respectfully submitted,

Texas Commission on Environmental
Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division



Celia Castro, Staff Attorney
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on December 8, 2010, the "Executive Director's Response to Public Comment" for Permit No. WQ0014404001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



Celia Castro, Staff Attorney
Environmental Law Division
State Bar No. 03997350