

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 14, 2011

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

Re: PHW EMW AWB & EB Texas, L.L.C.  
TCEQ Docket No. 2011-0173-MWD; TCEQ Permit No. WQ0014970001  
Executive Director's Response to Hearing Requests

Dear Ms. Castañuela:

Enclosed for filing, please find an original and 7 copies of the "Executive Director's Response to Hearing Requests." I have also included the following attachments to assist the Commission in the resolution of this matter:

Attachment A – Technical Summary and Draft Permit

Attachment B – Executive Director's Response to Public Comment

Attachment C – Compliance History Report

Attachment D – GIS Map

Attachment E – Landowners Map

Please file stamp these documents and return one complete set to Timothy J. Reidy, Staff Attorney, Environmental Law Division, MC 173. If you have any questions, please do not hesitate to contact me at (512) 239-0969.

Sincerely,

A handwritten signature in black ink that reads "Tim Reidy".

Timothy J. Reidy, Staff Attorney  
Environmental Law Division

**DOCKET NO. 2011-0173-MWD**

<b>APPLICATION BY</b>	<b>§</b>	<b>BEFORE THE</b>
<b>PHW EMW AWB &amp; EB TEXAS, L.L.C.</b>	<b>§</b>	<b>TEXAS COMMISSION ON</b>
<b>FOR TPDES PERMIT NO.</b>	<b>§</b>	<b>ENVIRONMENTAL QUALITY</b>
<b>WQ0014970001</b>	<b>§</b>	

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**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS**

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**I. INTRODUCTION**

The Executive Director of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests (Response) on the application of PHW EMW AWB & EB Texas, L.L.C. (Applicant) for Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0014970001. Jeffrey Griffith, Donald Kinkade, Erwin Kraehemann, Carl Moore, Les Parker, and Frank Stalling, Jr. timely filed requests for a contested case hearing.

Attached for Commission consideration are the following:

- Attachment A – Technical Summary and Draft Permit
- Attachment B – Executive Director's Response to Public Comment
- Attachment C – Compliance History Report
- Attachment D – GIS Map
- Attachment E – Landowners Map

**II. DESCRIPTION OF FACILITY**

The Applicant has applied to the TCEQ for a new permit that would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day (GPD). The proposed wastewater treatment facility will serve the Shady Hill Oaks Mobile Home and RV Park. The treated effluent will be discharged via pipe to an unnamed tributary, then to Elm Branch, then to Village Creek, then to Lake Arlington in Segment No. 0828 of the Trinity River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary, and no significant aquatic life use for Elm Branch. The designated uses for Segment No. 0828 of the Trinity River Basin are high aquatic life use, public water supply, and contact recreation. The proposed facility will be located at 5566 Mitchell Saxon Road, approximately 90 feet south of Mitchell Saxon Road in Tarrant County, Texas.

### **III. PROCEDURAL BACKGROUND**

The permit application was received on March 8, 2010 and declared administratively complete on April 1, 2010. The Combined Notice of Receipt and Intent to Obtain a Water Quality Permit and Notice of Application and Preliminary Decision for a Water Quality Permit and Notice of a Public Meeting on an Application for TPDES Municipal Wastewater Permit (Combined NORI/NAPD & NOPM) was published on August 11, 2010 in the *Tex-Mex Noticias* (Spanish version) and August 21, 2010 in the *Fort Worth Star-Telegram* (English version). A public meeting was held on September 21, 2010 at the Holiday Inn Express Hotel and Suites in Mansfield, Texas. The public comment period ended on September 28, 2010. The Executive Director's Response to Public Comment (RTC) was filed on December 22, 2010. The Executive Director's Final Decision Letter was mailed on December 28, 2010, and the period for filing a Request for Reconsideration or Contested Case Hearing ended on January 27, 2011. 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).

### **IV. THE EVALUTATION PROCESS FOR 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. The Commission implemented House Bill 801 by adopting procedural rules in 30 Texas Administrative Code (30 TAC) Chapters 39, 50, and 55. This permit application was declared administratively complete on April 1, 2010; therefore, it is subject to the procedural requirements of HB 801.

#### **A. Response to Request**

The Executive Director, the Public Interest Counsel, and the Applicant may each submit written response to a hearing request. 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- a) whether the requestor is an affected person;
- b) whether issues raised in the hearing request are disputed;
- c) whether the dispute involves questions of fact or of law;
- d) whether the issues were raised during the public comment period;
- e) 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 RTC;
- f) whether the issues are relevant and material to the decision on the application;  
and
- g) 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:

- a) 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;
- b) identify the person’s personal 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;
- c) request a contested case hearing;
- d) 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 response to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- e) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

## **C. “Affected Person” Status**

In order to grant a contested case hearing, the Commission must determine that a requestor is an “affected person.” Section 55.203 sets out who may be considered 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 the 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 § 50.203.

#### **D. Referral to the State Office of Administrative Hearings (SOAH)**

When the Commission grants a request for a contested case hearing, the Commission is required to issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing. 30 TAC § 50.115(b). Subsection 50.115(c) sets out the test for determining whether an issue may be referred to SOAH. “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 REQUESTS**

#### **A. Analysis of the Hearing Requests**

The Executive Director analyzed the hearing requests to determine whether they comply with Commission rules, who qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

##### **1. Whether the Requestors Complied with 30 TAC § 55.201(c) and (d)**

- a. Jeffrey Griffith – The public comment period for this permit application ended on September 28, 2010. The period for timely filing a request for a contested case hearing on this permit application ended on January 27, 2011. Mr. Griffith filed his comment letter, public meeting request, and request for a contested case hearing with the TCEQ's Office of the Chief Clerk on May 10, 2010. The hearing request: 1) provided Mr. Griffith's name, address, and daytime phone number; 2) provided Mr. Griffith's personal justiciable interest affected by the application, including a brief written statement explaining his location and distance relative to the proposed facility and how and why he believes he will be adversely affected by the proposed facility in a manner not common to members of the general public; 3) requested a contested case hearing; and 4) listed relevant and material disputed issues of fact that were raised during the public comment period as the basis of his hearing request (i.e., human health and safety, surface water quality, terrestrial wildlife, livestock, and notice).

The Executive Director recommends that the Commission find that Jeffrey Griffith's hearing request substantially complies with 30 TAC § 55.201(c) and (d).

- b. Donald Kinkade – The public comment period for this permit application ended on September 28, 2010. The period for timely filing a request for a contested case hearing on this permit application ended on January 27, 2011. Mr. Kinkade filed his comment letter, public meeting request, and request for a contested case hearing with the TCEQ's Office of the Chief Clerk on May 8, 2010. The hearing request: 1) provided Mr. Kinkade's name, address, and daytime phone number; 2) provided Mr. Kinkade's personal justiciable interest affected by the application, including a brief written statement explaining his location and distance relative to the proposed facility and how and why he believes he will be adversely affected by the proposed facility in a manner not common to members of the general public; 3) requested a contested case hearing; and 4) listed relevant and material disputed issues of fact that were raised during the public comment period as the basis of his hearing request (i.e., human health and safety, surface water quality, livestock, groundwater quality, aquatic life, odor, and sludge).

The Executive Director recommends that the Commission find that Donald Kinkade's hearing request substantially complies with 30 TAC § 55.201(c) and (d).

- c. Erwin Kraehemann – The public comment period for this permit application ended on September 28, 2010. The period for timely filing a request for a contested case hearing on this permit application ended on January 27, 2011. Mr. Kraehemann filed his comment letter and hearing request with the TCEQ's Office of the Chief Clerk on May 10, 2010. The hearing request: 1) provided Mr. Kraehemann's name, address, and daytime phone number; 2) provided Mr. Kraehemann's personal justiciable interest affected by the application, including a brief written statement explaining his location and distance relative to the proposed facility and how and why he will be adversely affected by the proposed facility in a manner not common to members of the general public; 3) requested a contested case hearing; and 4) listed

relevant and material disputed issues of fact that were raised during the public comment period as the basis of his hearing request (i.e., odor, aquatic life, and livestock)

The Executive Director recommends that the Commission find that Erwin Kraehemann's hearing request substantially complies with 30 TAC § 55.201(c) and (d).

- d. Carl Moore – The public comment period for this permit application ended on September 28, 2010. The period for timely filing a request for a contested case hearing on this permit application ended on January 27, 2011. Mr. Moore filed his comment letter, public meeting request, and hearing request with the TCEQ's Office of the Chief Clerk on May 5, 2010. The hearing request: 1) provided Mr. Moore's name, address, and daytime phone number; 2) provided Mr. Moore's personal justiciable interest affected by the application, including a brief written statement explaining his location and distance relative to the proposed facility and how and why he will be adversely affected by the proposed facility in a manner not common to members of the general public; 3) requested a contested case hearing; and 4) listed relevant and material disputed issues of fact that were raised during the public comment period as the basis of his hearing request (i.e., livestock, groundwater quality, surface water quality, human health and safety, terrestrial wildlife, odor, sludge, and notice).

The Executive Director recommends that the Commission find that Carl Moore's hearing request substantially complies with 30 TAC § 55.201(c) and (d).

- e. Les Parker – The public comment period for this permit application ended on September 28, 2010. The period for timely filing a request for a contested case hearing on this permit application ended on January 27, 2011. Mr. Parker filed two comment letters and contested case hearing requests with the TCEQ's Office of the Chief Clerk, one on May 3, 2010 and the second on May 10, 2010. The hearing requests: 1) provided Mr. Parker's name, address, and daytime phone number; 2) provided Mr. Parker's personal justiciable interest affected by the application, including a brief written statement explaining his location and distance relative to the proposed facility and how and why he will be adversely affected by the proposed facility in a manner not common to members of the general public; 3) requested a contested case hearing; and 4) listed relevant and material disputed issues of fact that were raised during the public comment period as the basis of his hearing requests (i.e., human health and safety, livestock, and groundwater quality).

The Executive Director recommends that the Commission find that Les Parker's hearing requests substantially comply with 30 TAC § 55.201(c) and (d).

- f. Frank Stalling, Jr. – The public comment period for this permit application ended on September 28, 2010. The period for timely filing a request for a contested case hearing on this permit application ended on January 27, 2011. Mr. Stalling filed his comment letter and contested case hearing request with the TCEQ's Office of the

Chief Clerk on May 8, 2010. The hearing requests: 1) provided Mr. Stalling's name, address, and daytime phone number; 2) provided Mr. Stalling's personal justiciable interest affected by the application, including a brief written statement explaining his location and distance relative to the proposed facility and how and why he will be adversely affected by the proposed facility in a manner not common to members of the general public; 3) requested a contested case hearing; and 4) listed relevant and material disputed issues of fact that were raised during the public comment period as the basis of his hearing request (i.e., monitoring and reporting).

The Executive Director recommends that the Commission find that Frank Stalling, Jr.'s hearing request substantially complies with 30 TAC § 55.201(c) and (d).

## **2. Whether the Requestors are Affected Persons**

- a. Jeffrey Griffith – Jeffrey Griffith is not listed on the affected landowners map. In his hearing request, Mr. Griffith stated that his property is located 193 yards away from the point of discharge. According to the GIS Map produced by Executive Director staff, Mr. Griffith's property is located approximately 784 feet from the proposed point of discharge. Mr. Griffith is an affected person due to the likely impact of the regulated activity on the use of his property.

The Executive Director recommends that the Commission find that Jeffrey Griffith is an affected person under 30 TAC § 55.203.

- b. Donald Kinkade – Donald Kinkade is not listed on the affected landowners map. In his hearing request, Mr. Kinkade stated that his property is approximately 400 yards due west of the applicant's property. According to the GIS Map produced by Executive Director staff, Mr. Kinkade's property is located approximately 1,381 feet from the proposed point of discharge. Mr. Kinkade is an affected person due to the likely impact of the regulated activity on the use of his property.

The Executive Director recommends that the Commission find that Donald Kinkade is an affected person under 30 TAC § 55.203.

- c. Carl Moore – Carl Moore is identified on the affected landowners map as a downstream landowner. Mr. Moore appears to own properties along the discharge route within one mile downstream from the point of discharge. Carl Moore's hearing request states that he owns approximately 180 acres in the area of the proposed facility. Mr. Moore is an affected person due to the likely impact of the regulated activity on the use of his property.

The Executive Director recommends that the Commission find that Carl Moore is an affected person under 30 TAC § 55.203.

- d. Les Parker – Les Parker is identified on the affected landowners map as a downstream landowner. The discharge route transverses Mr. Parker's property

within one mile from the point of discharge. Mr. Parker's hearing requests state that he owns 14 acres approximately 1/4 of a mile from the proposed facility. Mr. Parker is an affected person due to the likely impact of the regulated activity on the use of his property.

The Executive Director recommends that the Commission find that Les Parker is an affected person under 30 TAC § 55.203.

- e. Frank Stalling, Jr. – Frank Stalling, Jr. is identified on the affected landowners map as an adjacent landowner. Mr. Stalling's hearing request states that the proposed treatment site is just outside of his property boundary, and that the bar ditch adjoining his property line is along the discharge route. Mr. Stalling is an affected person due to the likely impact of the regulated activity on the use of his property.

The Executive Director recommends that the Commission find that Frank Stalling, Jr. is an affected person under 30 TAC § 55.203.

## **B. Whether the Issues Are Referable to SOAH**

In addition to recommending to the Commission those persons who qualify as affected persons, the Executive Director analyzes issues raised in accordance with the regulatory criteria. Unless otherwise noted, the issues discussed below were all raised during the public comment period. None of the issues were raised solely in a comment which has been withdrawn. All the identified issues in the response are considered disputed, unless otherwise noted.

### **Issue 1: Whether the proposed discharge will adversely affect human health and safety.**

This issue was raised and addressed in the Executive Director's RTC, Comment One. It involves a question of fact and is relevant and material to the TCEQ's decision on the application.

The draft permit was developed in accordance with the Texas Surface Water Quality Standards (TSWQS). These standards are designed to maintain the quality of water in the state and to be protective of human health and the environment. As part of the permit application process, the Executive Director must determine the uses of the receiving waters and set effluent limits that are protective of those uses.

In this case, the unclassified receiving water uses are limited aquatic life use for the unnamed tributary, and no significant aquatic life use for Elm Branch. The designated uses for Segment 0828 of the Trinity River Basin are public water supply and contact recreation. In accordance with 30 TAC § 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (Implementation Procedures, RG-194, January 2003), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing

uses will not be impaired by the proposed permit action. Narrative and numerical criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with intermediate, high, or exceptional aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 antidegradation review was required.

The Executive Director concludes that this issue **is relevant and material and recommends that the Commission refer** this issue to SOAH.

**Issue 2: Whether the proposed discharge will adversely impact surface water quality.**

This issue was raised and addressed in the Executive Director's RTC, Comment One. It involves a question of fact and is relevant and material to the TCEQ's decision on the application.

The draft permit was developed in accordance with the TSWQS. These standards are designed to maintain the quality of water in the state and to be protective of human health and the environment. Should the permit be issued, provided that the Applicant operates and maintains the facility according to TCEQ rules and the requirements contained in the draft permit, existing uses will be maintained and protected. The Executive Director has preliminarily determined that the proposed effluent limitations in the draft permit will not impair existing water quality uses and that no significant degradation of water quality is expected in water bodies with intermediate, high, or exceptional aquatic life uses.

The Executive Director concludes that this issue **is relevant and material and recommends that the Commission refer** this issue to SOAH.

**Issue 3: Whether the proposed discharge will adversely impact groundwater in the area.**

This issue was raised and addressed in the Executive Director's RTC, Comment 12. It involves a question of fact and is relevant and material to the TCEQ's decision on the application.

The Water Quality Division has preliminarily determined that the draft permit has been developed in accordance with the Texas Surface Water Quality Standards, which ensure that the effluent discharge is protective of aquatic life, human health, and the environment. The review process for surface water quality is conducted by the Standards Implementation Team and Water Quality Assessment Team surface water modelers. The Water Quality Division has determined that if the surface water quality is protected, then the groundwater quality in the vicinity will not be impacted by the discharge.

The Executive Director concludes that this issue **is relevant and material** and **recommends that the Commission refer** this issue to SOAH.

**Issue 4: Whether the applicant provided adequate notice of the proposed discharge in accordance with 30 TAC Chapter 39.**

This issue was raised and addressed in the Executive Director's RTC, Comment 17. It involves a question of fact and is relevant and material to the TCEQ's decision on the application.

The Executive Director concludes that this issue **is relevant and material** and **recommends that the Commission refer** this issue to SOAH.

**Issue 5: Whether the proposed discharge will adversely impact terrestrial wildlife.**

This issue was raised and addressed in the Executive Director's RTC, Comment Two and Three. It involves a question of fact and is relevant and material to the TCEQ's decision on the application.

The TCEQ Water Quality Assessment Section has determined that the draft permit for the proposed facility meets the requirements of the TSWQS, which are established to protect human health and terrestrial and aquatic life.

The Executive Director concludes that this issue **is relevant and material** and **recommends that the Commission refer** this issue to SOAH.

**Issue 6: Whether the proposed discharge will adversely impact aquatic life.**

This issue was raised and addressed in the Executive Director's RTC, Comment Two. It involves a question of fact and is relevant and material to the TCEQ's decision on the application.

The TCEQ Water Quality Assessment Section has determined that the draft permit for the proposed facility meets the requirements of the TSWQS, which are established to protect human health and terrestrial and aquatic life. 30 TAC § 307.6(b)(4) requires water in the state to be maintained to preclude adverse toxic effects on aquatic life, terrestrial wildlife, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three. The Executive Director does not anticipate the discharge of toxic effluent from the proposed facility.

The Executive Director concludes that this issue **is relevant and material** and **recommends that the Commission refer** this issue to SOAH.

**Issue 7: Whether the proposed discharge will adversely impact livestock.**

This issue was raised and addressed in the Executive Director's RTC, Comment Three. It involves a question of fact and is relevant and material to the TCEQ's decision on the application.

The effluent limitations contained in the draft permit will maintain and protect existing instream uses. The Texas Agricultural Extension Service provides a helpful guidance document entitled "Water Quality: Its Relationship to Livestock." (Publication No. L-2374). A comparison of the substances listed in the "Recommended Limits of Concentration of Some Potentially Toxic Substances in Drinking Water for Livestock" section of the Texas Agricultural Extension Service guidance document and those substances known to occur in domestic wastewater discharges indicates that these substances are not expected to occur in treated effluent; and should they occur, would be well below background levels. The TCEQ does not expect the proposed discharge to adversely affect livestock or other animals in the area of the proposed facility.

The Executive Director concludes that this issue **is relevant and material** and **recommends that the Commission refer** this issue to SOAH.

**Issue 8: Whether nuisance odor will emanate from the proposed wastewater treatment plant.**

This issue was raised and addressed in the Executive Director's RTC, Comment 10. It involves a question of fact and is relevant and material to the TCEQ's decision on the application.

According to the permit application, the Applicant will control and abate nuisance odor concerns by owning the buffer zone area in compliance with 30 TAC § 309.13(e).

The Executive Director concludes that this issue **is relevant and material** and **recommends that the Commission refer** this issue to SOAH.

**Issue 9: Whether the draft permit conditions regarding sludge disposal comply with 30 TAC Chapter 312.**

This issue was raised and addressed in the Executive Director's RTC, Comment 10. It involves a question of fact and is relevant and material to the TCEQ's decision on the application.

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. Details of the Sludge Provisions are provided on pages 12 through 22 of the draft permit. The draft permit authorizes the permittee to dispose of sludge only at a 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. The draft permit does not authorize distribution and marketing of sludge. The draft permit does not authorize land application of Class A Sludge. The draft permit does not authorize the permittee to land apply sludge on property owned, leased or under the direct control of the permittee. Finally, it is TCEQ's standard practice that sewage sludge be tested once during the term of the permit for mechanical treatment facilities with a permitted flow of less than one million gallons per day.

The Executive Director concludes that this issue is relevant and material and recommends that the Commission refer this issue to SOAH.

**Issue 10: Whether the monitoring and reporting requirements contained in the draft permit conditions are adequate to ensure compliance with TCEQ rules.**

The issue was raised and addressed in the Executive Director's RTC, Comment Seven. It involves a question of fact and is relevant and material to the TCEQ's decision on the application.

The draft permit requires the permittee to analyze the treated effluent prior to discharge and provide monthly reports to TCEQ that include the results of the analyses. All samples must be collected and analyzed according to 30 TAC Chapter 319 of TCEQ's rules, Subchapter A, Monitoring and Reporting System. The draft permit requires the permittee to monitor the flow five times per week by instantaneous measurement, to monitor the 5-day biochemical oxygen demand, total suspended solids and minimum dissolved oxygen once per week by grab sample, to monitor the chlorine residual five times per week by grab sample, and to monitor the pH once per month by grab sample.

The Executive Director concludes that this issue is relevant and material and recommends that the Commission refer this issue to SOAH.

**Issue 11: Whether the proposed discharge will adversely affect Lake Arlington's use as a public water supply.**

The issue was raised and addressed in the Executive Director's RTC, Comment Five. It involves a question of fact, but is not relevant and material to the TCEQ's decision on the application.

During the permit application review process, Executive Director staff determined that the unnamed tributary travels approximately 1.5 stream miles to the confluence with Elm Branch, Elm Branch travels approximately 1.25 stream miles to the confluence with Village Creek, and Village Creek travels 2.6 stream miles to Lake Arlington. This brings the total distance between the discharge point and Lake Arlington to 5.35 stream miles. Executive Director staff determined that the Watershed Protection Rules at 30 TAC §§

311.61-311.66, which apply to discharges directly to Lake Arlington or discharges within five stream miles upstream of the pool level of Lake Arlington, are not applicable to this discharge. Generally, when assessing receiving water uses, the Standards Implementation Team assesses the stream reach three miles from the point of discharge.

The Executive Director concludes that this issue **is not relevant and material and does not recommend** referral to SOAH.

**Issue 12: Whether the proposed wastewater treatment facility will adversely impact property values.**

The issue was raised and addressed in the Executive Director's RTC, Comment 19. It involves a question of fact, but is not relevant and material to the TCEQ's decision on the application.

A proposed facility's potential impact on surrounding property values is outside the scope of the normal evaluations of a wastewater discharge permit application. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters.

The Executive Director concludes that this issue **is not relevant and material and does not recommend** referral to SOAH.

**Issue 13: Whether the proposed activity will cause runoff onto neighboring properties.**

The issue was raised and addressed in the Executive Director's RTC, Comment Four. It involves a question of fact, but is not relevant and material to the TCEQ's decision on the application.

The issue of runoff is outside of the scope of normal evaluations for a wastewater discharge permit application. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters.

The Executive Director concludes that this issue **is not relevant and material and does not recommend** referral to SOAH.

**Issue 14: Whether the proposed activity will cause erosion.**

The issue was raised and addressed in the Executive Director's RTC, Comment Four. It involves a question of fact, but is not relevant and material to the TCEQ's decision on the application.

The issue of erosion is outside of the scope of normal evaluations for a wastewater discharge permit application. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. Possible future erosion is not a factor in determining whether an applicant has met all of the statutory and regulatory criteria applicable to a wastewater discharge permit.

The Executive Director concludes that this issue **is not relevant and material** and **does not recommend** referral to SOAH.

**Issue 15: Whether the operation of the proposed wastewater treatment plant will cause noise.**

The issue was raised and addressed in the Executive Director's RTC, Comment Nine. It involves a question of fact, but is not relevant and material to the TCEQ's decision on the application.

The TPDES permitting process is limited to controlling the discharge of pollutants into water in the state. Noise concerns are outside the scope of a TPDES permit application review. The draft permit does not authorize the creation of a nuisance. The issuance of the draft permit does not limit an individual's ability to seek common law remedies for nuisance.

The Executive Director concludes that this issue **is not relevant and material** and **does not recommend** referral to SOAH.

## **VI. DURATION OF THE CONTESTED CASE HEARING**

Should the Commission decide to refer the case, the Executive Director recommends that the duration for a contested case hearing on this matter, between the preliminary hearing and the presentation of a proposal for decision before the Commission, be nine months.

## **VII. EXECUTIVE DIRECTOR'S RECOMMENDATIONS**

The Executive Director recommends the following actions by the Commission:

- a) Find that Jeffrey Griffith, Donald Kinkade, Erwin Kraehemann, Carl Moore, Les Parker, and Frank Stalling, Jr. are affected persons.
- b) Should the Commission find that any of the requestors are affected persons, the following issues should be referred to SOAH for a Contested Case Hearing for a duration of nine months:

Issue 1: Whether the proposed discharge will adversely affect human health and safety.

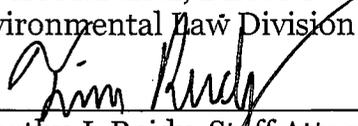
- Issue 2: Whether the proposed discharge will adversely impact surface water quality.
- Issue 3: Whether the proposed discharge will adversely impact groundwater in the area.
- Issue 4: Whether the applicant provided adequate notice of the proposed discharge in accordance with 30 TAC Chapter 39.
- Issue 5: Whether the proposed discharge will adversely impact terrestrial wildlife.
- Issue 6: Whether the proposed discharge will adversely impact aquatic life.
- Issue 7: Whether the proposed discharge will adversely impact livestock.
- Issue 8: Whether nuisance odor will emanate from the proposed wastewater treatment plant.
- Issue 9: Whether the draft permit conditions regarding sludge disposal comply with 30 TAC Chapter 312.
- Issue 10: Whether the monitoring and reporting requirements contained in the draft permit conditions are adequate to ensure compliance with TCEQ rules.

Respectfully submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G.  
Executive Director

Robert Martinez, Director  
Environmental Law Division

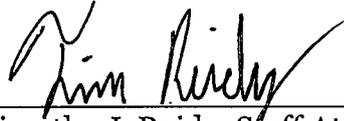
By 

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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

I certify that on March 14, 2011, the original and seven copies of the "Executive Director's Response to Hearing Requests" relating to the application of PHW EMW AWB & EB Texas, L.L.C. for TPDES Permit No. WQ001497001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk, and a complete copy was transmitted by mail, facsimile, inter-agency mail, electronic mail, or hand-delivery to all persons on the attached mailing list.



---

Timothy J. Reidy, Staff Attorney  
Environmental Law Division  
State Bar No. 24058069

Mailing List  
Executive Director's Response to Hearing Requests  
PHW EMW AWB & EB Texas, L.L.C.  
TCEQ Docket No. 2011-0173-MWD  
TCEQ Permit No. WQ0014970001

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TCEQ Office of Chief Clerk,  
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State of Texas House of  
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Richard Wilson  
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Mark B. Windsor  
5611 Mitchell Saxon Rd.  
Fort Worth, Texas 76140

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**Attachment A –  
Technical Summary and Draft  
Permit**

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

DESCRIPTION OF APPLICATION

Applicant: PHW, EMW, AWB & EB Texas, LLC;  
Texas Pollutant Discharge Elimination System (TPDES) Permit No.  
WQ0014970001, TX0132586

Regulated Activity: Domestic Wastewater Permit

Type of Application: New Permit

Request: New Permit

Authority: Federal Clean Water Act (CWA) § 402; Texas Water Code (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 01, 2013** 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 new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.020 million gallons per day. The proposed wastewater treatment facility will serve the Shady Hill Oaks Mobile Home and RV Park located at 5566 Mitchell Saxon Road, Fort Worth, Texas.

PROJECT DESCRIPTION AND LOCATION

The Shady Hill Oaks Wastewater Treatment Facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units will include bar screens, aeration basins, final clarifiers, aerobic sludge digesters and a chlorine contact 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 at 5566 Mitchell Saxon Road, approximately 0.5 mile east of the intersection of Banks Road and Mitchell Saxon Road, approximately 90 feet south of Mitchell Saxon Road in Tarrant County, Texas 76140.

The treated effluent will be discharged via pipe to an unnamed tributary; thence to Elm Branch; thence to Village Creek; thence to Lake Arlington in Segment No. 0828 of the Trinity River Basin. The unclassified receiving water uses are limited aquatic life use for Unnamed tributary and no significant aquatic life use for Elm Branch. The designated uses for Segment No. 0828 are high aquatic life use, public water supply and contact recreation. The effluent limitations in the draft permit will maintain and protect the existing instream uses. In accordance with §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no

water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

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 limits recommended above have been reviewed for consistency with the State of Texas Water Quality Management Plan (WQMP). The recommended limits are not contained in the approved WQMP. However, these limits will be included in the next WQMP update. A Waste Load Evaluation has not been prepared for Segment 0828.

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. 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 considered 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. The permit does not require EPA review with respect to the presence of endangered or threatened species.

Segment 0828 is not currently listed on the State's inventory of impaired and threatened waters (the 2008 Clean Water Act Section 303(d) list).

#### SUMMARY OF EFFLUENT DATA

Self-reporting data is not available since the facility is not in operation.

#### PROPOSED PERMIT CONDITIONS

The draft permit authorizes a discharge of treated domestic wastewater at a volume not to exceed a daily average flow of 0.020 million gallons per day.

The effluent limitations in the draft permit, based on a 30-day average, are 20 mg/l BOD<sub>5</sub>, 20 mg/l TSS, 126 *E. coli* CFU or MPN per 100 ml and 4.0 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.

Through right-of-way of Mitchell Saxon Road, the permittee has submitted sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee according to 30 TAC § 309.13(e)(3). The permittee shall comply with the requirements of 30 TAC § 309.13(a) through (d).

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

On Item 2.a, Page 13 of 13 of the Domestic Administrative Report 1.1, the applicant indicated meeting the buffer zone requirement through ownership. However, based on the buffer zone maps submitted on March 8, 2010 and March 25, 2010, it was determined that the applicant meets the buffer zone requirement through right-of-way of Mitchell Saxon Road.

SUMMARY OF CHANGES FROM EXISTING PERMIT

N/A.

BASIS FOR PROPOSED DRAFT PERMIT

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

1. Application received March 8, 2010 and additional information received March 25, 2010 and April 26, 2010.
2. 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.
3. 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.
4. Interoffice memoranda from the Water Quality Assessment Section of the TCEQ Water Quality Division.
5. Consistency with the Coastal Management Plan: The facility is not located in the Coastal Management Program boundary.
6. "Procedures to Implement the Texas Surface Water Quality Standards", Texas Commission on Environmental Quality, January 2003.
7. Texas 2008 Clean Water Act Section 303(d) List, Texas Commission on Environmental Quality, April 1, 2008; approved by the EPA July 9, 2008.
8. 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.

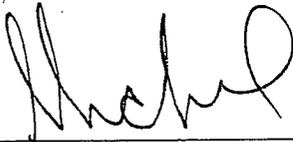
Any interested person may request a public meeting on the application until the deadline for filing public comments. A public meeting is intended for the taking of public comment, and is not a contested case proceeding.

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 Dr. Michael A. Redda at (512) 239-4631.



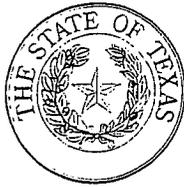
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Michael A. Redda, Ph.D.  
Municipal Permits Team  
Wastewater Permitting Section (MC 148)

---

April 23, 2010

Date



TPDES PERMIT NO. WQ0014970001  
[For TCEQ office use only - EPA I.D.  
No. TX0132586]

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

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

PHW, EMW, AWB & EB Texas, LLC

whose mailing address is

P.O. Box 1464  
Mansfield, Texas 76063-1464

is authorized to treat and discharge wastes from the Shady Hill Oaks Wastewater Treatment Facility, SIC Code 6515

located at 5566 Mitchell Saxon Road, approximately 0.5 mile east of the intersection of Banks Road and Mitchell Saxon Road, approximately 90 feet south of Mitchell Saxon Road in Tarrant County, Texas 76140

via pipe to an unnamed tributary; thence to Elm Branch; thence to Village Creek; thence to Lake Arlington in Segment No. 0828 of the Trinity 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 01, 2013**.

ISSUED DATE:

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For the Commission

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the date of issuance 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 0.020 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 56 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Minimum Self-Monitoring Requirements</u>	
	Daily Avg mg/l (lbs/day)	7-day Avg mg/l	Daily Max mg/l	Report Daily Avg. & Max. Single Grab mg/l	Measurement Frequency Sample Type
Flow, MGD	Report	N/A	Report	N/A	Five/week Instantaneous
Biochemical Oxygen Demand (5-day)	20 (3.3)	30	45	65	One/week Grab
Total Suspended Solids	20 (3.3)	30	45	65	One/week Grab
<i>E. coli</i> , CFU or MPN per 100 ml	126	N/A	N/A	394	One/quarter 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.

**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 (*E. coli* or Enterococci) - Colony Forming Units (CFU) or Most Probable Number (MPN) 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  $n$ th 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 20<sup>th</sup> 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 4) 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 4) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 30 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):

<u>Amount of sewage sludge (*) metric tons per 365-day period</u>	<u>Monitoring Frequency</u>
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

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

Table 3

<u>Pollutant</u>	<u>Monthly Average Concentration (milligrams per kilogram)*</u>
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 4) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division, by September 30 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 1 (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 4) 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 4) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 30 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 4) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 30 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.

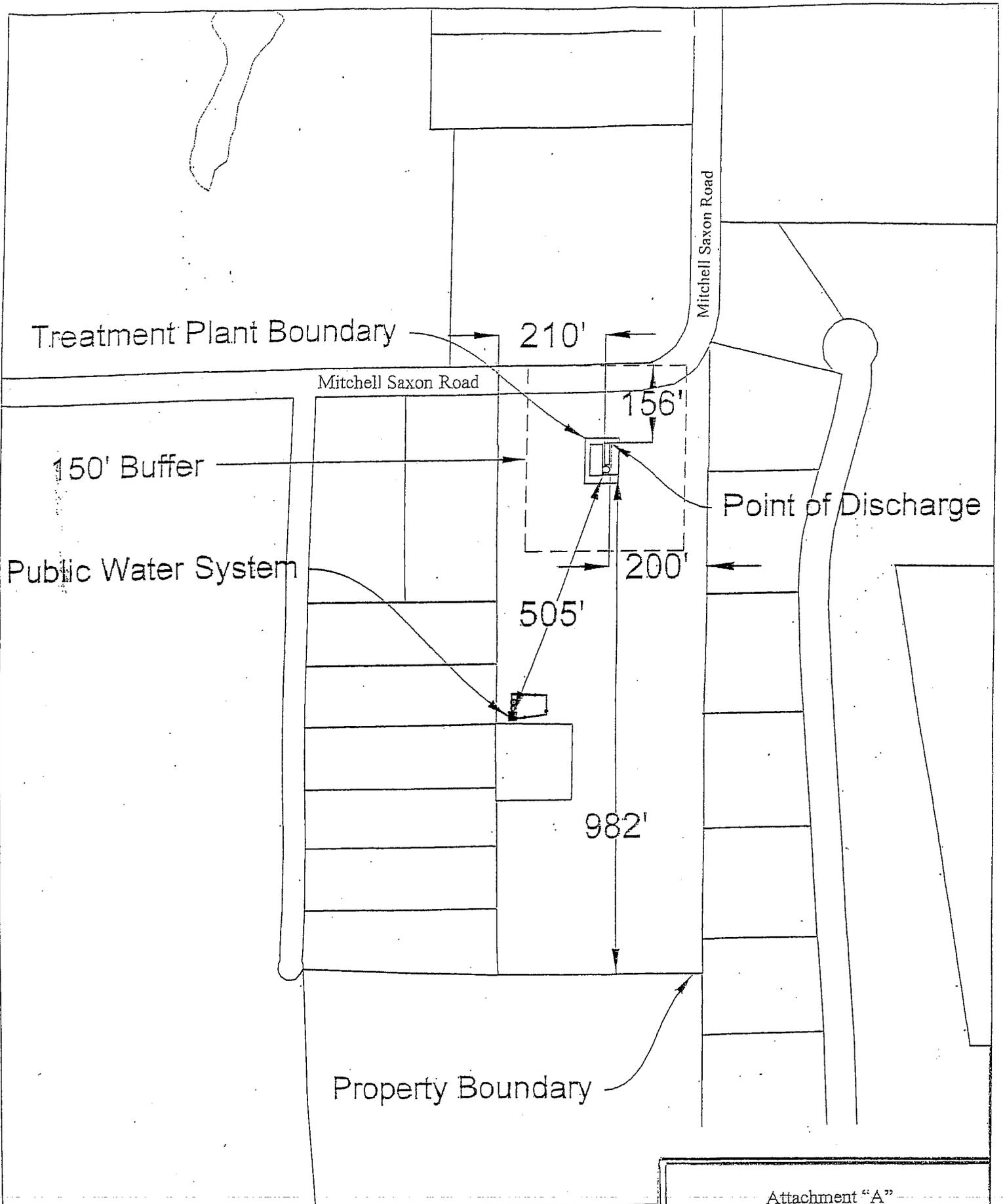
**OTHER REQUIREMENTS**

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 D facility must be operated by a chief operator or an operator holding a Category D 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 that 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.

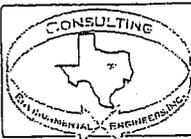
2. The facility is not located in the Coastal Management Program boundary.
3. The permittee is hereby placed on notice that this permit may be reviewed by the TCEQ after the completion of any new intensive water quality survey on Segment No. 0828 of the Trinity River Basin and any subsequent updating of the water quality model for Segment No. 0828, 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. Through right-of-way of Mitchell Saxon Road, the permittee has submitted sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the permittee according to 30 TAC § 309.13(e)(3). The permittee shall comply with the requirements of 30 TAC § 309.13(a) through (d). (See Attachment A.)
5. The permittee shall provide facilities for the protection of its wastewater treatment facilities from a 100-year flood.
6. In accordance with 30 TAC §319.9, a permittee that has at least twelve months of uninterrupted compliance with its bacteria limit may notify the commission in writing of its compliance and request a less frequent measurement schedule. To request a less frequent schedule, the permittee shall submit a written request to the TCEQ Wastewater Permitting Section (MC 148) for each phase that includes a different monitoring frequency. The request must contain all of the reported bacteria values (Daily Avg. and Daily Max/Single Grab) for the twelve consecutive months immediately prior to the request. If the Executive Director finds that a less frequent measurement schedule is protective of human health and the environment, the permittee will be given a less frequent measurement schedule. For this permit, 1/quarter will be reduced to 1/6 months. **A violation of any bacteria limit by a facility that has been granted a less frequent measurement schedule will require the permittee to return to the standard frequency schedule**, and the permittee may not apply for another reduction in measurement frequency for at least 24 months from the date of the last violation. The Executive Director may establish a more frequent measurement schedule if necessary to protect human health or the environment.
7. 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 217.6(c). 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 Wastewater Treatment Systems. The permittee shall clearly show how the treatment system will meet the final permitted effluent limitations required on Page 2 of the permit.

8. 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 4) 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.



Attachment "A"  
 Buffer Zone Map  
 PHW, EMW, AWB & EB Texas, LLC  
 TPDES Permit No. WQ0014970001

Date  
 March 22, 2010  
 Drawn By  
 CPG jbh  
 Scale  
 1" = 250'



150 N. Harbin Dr. Suite 406  
 Stephenville, Texas 76401  
 Phone/Fax: (254) 868-8130  
 Email: ceinc@ceinc.org  
 Registered Firm: F-2323

Shady Hill Oaks MHP & RV Park

Buffer Zone Map

**Attachment B –  
Executive Director’s Response  
to Public Comment**

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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

TCEQ PERMIT NO. WQ0014970001

DEC 22 PM 4:32

APPLICATION BY § BEFORE THE  
PHW, EMW, AWB, & EB § CHIEF CLERK'S OFFICE  
TEXAS, LLC § TEXAS COMMISSION ON  
§ ENVIRONMENTAL  
§ QUALITY

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### EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

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The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment on PHW, EMW, AWB, & EB Texas, LLC's (Applicant) application and on the Executive Director's preliminary decision. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters from the following persons: the Honorable Chris Turner, State Representative for House District 96, Matthew Geske, District Director for State Representative Chris Turner, Darrel Andrews, on behalf of Tarrant Regional Water District, Jeffery Griffith, Julia J. Hunt, P.E., Director of Water Utilities for the City of Arlington Water Utilities, Jack Johnson, William Jones, Donald Kinkade, Erwin Kraehemann, Michael Leonhardt, Carl Moore, Les Parker, Ronald W. Rickard, Debra Smith, Robert Smith, Frank Stalling, Margaret Tolle, Vernal Tolle, and Richard Wilson. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or TCEQ's permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

### BACKGROUND

#### Description of Facility

The Applicant has applied to the TCEQ for a new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014970001, which would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day (GPD). The proposed wastewater treatment facility will serve the Shady Hill Oaks Mobile Home and RV Park. The treated effluent will be discharged via pipe to an unnamed tributary, then to Elm Branch, then to Village Creek, then to Lake Arlington in Segment No. 0828 of the Trinity River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary, and no significant aquatic life use for Elm Branch. The

designated uses for Segment No. 0828 of the Trinity River Basin are high aquatic life use, public water supply, and contact recreation. The proposed facility will be located at 5566 Mitchell Saxon Road, approximately 0.5 mile east of the intersection of Banks Road and Mitchell Saxon Road, approximately 90 feet south of Mitchell Saxon Road in Tarrant County, Texas.

### Procedural Background

The permit application was received on March 8, 2010 and declared administratively complete on April 1, 2010. The Combined Notice of Receipt and Intent to Obtain a Water Quality Permit and Notice of Application and Preliminary Decision for a Water Quality Permit and Notice of a Public Meeting on an Application for TPDES Municipal Wastewater Permit (Combined NORI/NAPD & NOPM) was published on August 11, 2010 in the *Tex-Mex Noticias* (Spanish version) and August 21, 2010 in the *Fort Worth Star-Telegram* (English version). A public meeting was held on September 21, 2010 at the Holiday Inn Express Hotel and Suites in Mansfield, Texas. The public comment period ended on October 28, 2010. 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 (76<sup>th</sup> Legislature, 1999).

### **COMMENTS AND RESPONSES**

#### **COMMENT 1:** (Health, Safety, and Environmental Effects)

Hon. Chris Turner commented that he was concerned about safety, health, and environmental effects the proposed treatment facility may have on his constituents' property and the surrounding areas. Debra Smith, Robert Smith, and Michael Leonhardt asked why the state was allowing such a large system to discharge into a dry drain that goes into Walnut Creek Tributary, causing a number of health and contamination issues. Jeffery Griffith commented that the proposed facility will be a health and environmental hazard. Mr. Griffith commented that his wife, child, animals, and other children in the area will be adversely affected by the proposed facility. Carl Moore, Les Parker, Michael Leonhardt, and Mr. Griffith commented that the proposed discharge will provide a breeding ground for mosquitoes carrying the West Nile Virus. Mr. Parker commented that that the West Nile Virus poses a health hazard to both people and livestock. Mr. Griffith commented that the proposed discharge would cause irreparable contamination and destroy eco friendly areas downstream. Donald Kinkade and Carl Moore commented that the proposed facility will cause irreparable damage, contamination, and public health issues. Mr. Kinkade and Mr. Moore commented that the proposed discharge could affect the eco system. Les Parker commented that he and his horses cross the unnamed tributary along the proposed discharge route every day, multiple times a day. Mr. Parker is concerned about the potential adverse health effects from coming into contact with the treated wastewater. Richard Wilson commented that the proposed

discharge will cause property damage and health issues. Mr. Wilson also commented that the proposed discharge will damage trees.

**RESPONSE 1:**

The draft permit was developed in accordance with the Texas Surface Water Quality Standards (TSWQS). These standards are designed to maintain the quality of water in the state and to be protective of human health and the environment. As part of the permit application process, the Executive Director must determine the uses of the receiving waters and set effluent limits that are protective of those uses.

In accordance with 30 TAC § 307.5, no activities subject to regulatory action shall impair existing uses, i.e., contact recreation (Tier I Antidegradation), or degrade the water quality of waters that exceed fishable/swimmable quality by more than a *de minimis* extent (Tier 2 Antidegradation). Water quality sufficient to protect existing uses must be maintained. Fishable/swimmable waters are defined as waters which have quality sufficient to support propagation of indigenous fish, shellfish, and wildlife and recreation in and on the water. Waters that are assigned an intermediate, high, or exceptional aquatic life use are deemed as exceeding fishable/swimmable quality.

In this case, the unclassified receiving waters uses are limited aquatic life use for the unnamed tributary, and no significant aquatic life use for Elm Branch. The designated uses for Segment 0828 of the Trinity River Basin are public water supply and contact recreation. In accordance with 30 TAC § 307.5 and the TCEQ's *Procedures to Implement the Texas Surface Water Quality Standards* (Implementation Procedures, RG-194, January 2003), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing uses will not be impaired by the proposed permit action. Narrative and numerical criteria to protect existing uses will be maintained. The draft permit contains effluent limitations based on a 30 day average, of 20 mg/l BOD<sub>5</sub>, 20 mg/l TSS, 126 *E. coli* CFU or MPN per 100 ml and 4.0 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. These limits are expected to be protective of human health, aquatic life and livestock. This review has preliminarily determined that no water bodies with intermediate, high, or exceptional aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 antidegradation review was required.

Should the permit be issued, provided that the Applicant operates and maintains the facility according to TCEQ rules and the requirements contained in the draft permit, existing uses will be maintained and protected. The Executive Director has preliminarily determined that the proposed effluent limitations in the draft permit will not impair existing water quality uses and that no significant degradation of water quality is expected in water bodies with intermediate, high,

or exceptional aquatic life uses. This preliminary determination can be reexamined and may be modified if new information is received.

**COMMENT 2:** (Aquatic Life)

Donald Kinkade and Carl Moore commented that the proposed facility could adversely affect fish in the area.

**RESPONSE 2:**

As previously mentioned, the Executive Director must determine the uses of the receiving waters and set effluent limits that are protective of those uses as part of the application process. The TCEQ Water Quality Assessment Section has determined that the draft permit for the proposed facility meets the requirements of the TSWQS, which are established to protect human health and terrestrial and aquatic life. 30 TAC § 307.6(b)(4) requires water in the state to be maintained to preclude adverse toxic effects on aquatic life, terrestrial wildlife, livestock, or domestic animals, resulting from contact, consumption of aquatic organisms, consumption of water, or any combination of the three. Since the proposed discharge is less than one million gallons per day and the Applicant is not conducting manufacturing, commercial, mining, or silvicultural activities, the Executive Director does not anticipate the discharge of toxic effluent from the proposed facility.

Additionally, the draft permit contains effluent limitations based on a 30 day average, of 20 mg/l BOD<sub>5</sub>, 20 mg/l TSS, 126 *E. coli* CFU or MPN per 100 ml and 4.0 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. These limits are expected to be protective of human health, aquatic life and livestock.

**COMMENT 3:** (Livestock)

Carl Moore commented that the proposed discharge could adversely affect livestock. Richard Wilson commented that he was concerned that the proposed discharge's effect on livestock.

**RESPONSE 3:**

As previously mentioned, the Executive Director must determine the uses of the receiving waters and set effluent limits that are protective of those uses as part of the application process. The Commission does not have separate water quality based effluent limitations for livestock water. However, the TCEQ Water Quality Assessment Section has determined that the draft permit for the proposed facility meets the requirements of the TSWQS, which are established to protect human health and terrestrial and aquatic life. Aquatic organisms are more sensitive to water quality components than terrestrial organisms. In accordance with 30 TAC

§ 307.5 and the Implementation Procedures, an antidegradation review of the receiving waters was performed. This review has preliminarily determined that existing uses will not be impaired by the proposed discharge. The effluent limitations contained in the draft permit will maintain and protect existing instream uses, and the proposed discharge is expected to be safe for consumption by livestock. The Texas Agricultural Extension Service provides a helpful guidance document entitled "Water Quality: Its Relationship to Livestock." (Publication No. L-2374). A comparison of the substances listed in the "Recommended Limits of Concentration of Some Potentially Toxic Substances in Drinking Water for Livestock" section of the Texas Agricultural Extension Service guidance document and those substances known to occur in domestic wastewater discharges indicates that these substances are not expected to occur in treated effluent; and should they occur, would be well below background levels. The TCEQ does not expect the proposed discharge to adversely affect livestock or other animals in the area of the proposed facility.

**COMMENT 4:** (Runoff, Erosion, and Flooding)

Hon. Chris Turner commented that he is concerned about potential drainage issues that would affect nearby homes, and cattle that drink from the creek. Erwin Kraehemann commented that runoff from the Applicant's existing sewage system had entered his property. Mr. Kraehemann commented that the proposed increase in the number of mobile homes in the park would exacerbate the runoff problem, eventually impacting Lake Arlington, the environment, fish, and livestock. Carl Moore commented that he was concerned that the proposed discharge will cause erosion. Debra Smith, Robert Smith, and Michael Leonhardt expressed their concern that the addition of mobile homes and RV's will create storm water runoff from the Applicant's property. Frank Stalling asked who is responsible for the maintenance of the bar ditch along the proposed discharge route. Mr. Stalling commented that the bar ditch is not designed or intended to be used as a route for a large volume of constantly running fluids. Mr. Stalling also commented that soil in the area is sandy and erodes easily. Mr. Stalling commented that he fears that erosion will expose utility lines along the bar ditch, interfering with his internet access and negatively impacting his small business. Mr. Stalling commented that the draft permit did not require containment structures to capture spillage or rainwater runoff, and that any runoff from the proposed facility would flow onto his property. Mr. Stalling also expressed his concern about plumbing issues occurring at the collection point (i.e., RV hookups or trailer connections). Vernal Tolle and Margaret Tolle commented that the Applicant's original treatment system would overflow onto their property. Richard Wilson commented that the proposed discharge of 20,000 gallons per day would turn the bar ditch into a swamp and flood his property. Mr. Wilson asked who is responsible for the maintenance of the bar ditch. Mr. Wilson commented that he was concerned with erosion. Mr. Wilson also commented that the proposed discharge will flood swimming pools.

#### **RESPONSE 4:**

The issues of erosion, runoff, and flooding are outside of the scope of normal evaluations for a wastewater discharge permit application. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. Possible future erosion is not a factor in determining whether an applicant has met all of the statutory and regulatory criteria applicable to a wastewater permit. The draft permit includes effluent limits and monitoring requirements that the Applicant must meet during rainfall events and periods of flooding to ensure that the proposed discharge meets applicable water quality standards. In its application, the Applicant indicated that the facility is located above the 100-year flood plain.

Unauthorized discharge is prohibited in the draft permit. Permit Condition(2)(g) in the draft permit states that:

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.

The issuance of this permit does not limit the ability of nearby landowners to use common law remedies to seek redress for any interference with the use and enjoyment of their property. 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.

#### **COMMENT 5:** (Watershed Protection and Lake Arlington)

Darrel Andrews, Assistant Director of the Environmental Division of Tarrant Regional Water District, commented that according to Texas Water Development Board's Conservation Pool Boundary shows that the proposed discharge is 4.9 miles from the Lake Arlington water quality area; and therefore, the Watershed Protection Rules at 30 TAC §§ 311.61 – 311.66 apply to the proposed discharge. Mr. Andrews commented that the Watershed Protection Rules at 30 TAC §§ 311.61-311.66 require tertiary filtration and effluent limits of 10 mg/L BOD and 15 mg/L TSS. Mr. Andrews requested that the proposed facility comply with the Watershed Protection Rules at 30 TAC §§ 311.61-311.66. Mr. Andrews commented that, even though there is no numeric nutrient limitation for Lake Arlington, he was concerned that the proposed discharge would add Chlorophyll A to Lake Arlington. Mr. Andrews commented that Applicant would not be adverse to addition of a Total Phosphorous limit of 1.0 mg/L to the draft permit

to address the Chlorophyll A concerns. Mr. Andrews requested that a 1.0 mg/L phosphorus limit be included in the draft permit.

Hon. Chris Turner expressed concern about effluent draining into Lake Arlington. Julia J. Hunt, P.E., Director of Water Utilities for the City of Arlington Water Utilities Department, asked what the TCEQ does to look at the cumulative effect package plants have on watersheds. Ms. Hunt commented that the City of Arlington has had problems with other package wastewater treatment plants in the Lake Arlington Watershed. Ms. Hunt commented that the City of Arlington is concerned with this facility's proximity to a main creek that feeds Lake Arlington. Ms. Hunt also expressed her concern regarding nutrient loading and discharges containing personal care products. Ms. Hunt requested that the Executive Director consider requiring disinfection or additional nutrient removal. Ms. Hunt also requested that the City of Arlington be given the opportunity to review technical documents associated with the proposed treatment plant. Carl Moore commented that the proposed discharge will adversely impact Lake Arlington.

#### **RESPONSE 5:**

During the permit application review process, Executive Director staff determined that the unnamed tributary travels approximately 1.5 stream miles to the confluence with Elm Branch, Elm Branch travels approximately 1.25 stream miles to the confluence with Village Creek, and Village Creek travels 2.6 stream miles to Lake Arlington. This brings the total distance between the discharge point and Lake Arlington to 5.35 stream miles. The Watershed Protection Rules at 30 TAC §§ 311.61-311.66 apply to discharges directly to Lake Arlington or in the "Lake Arlington water quality area," that is defined as "[t]hose portions of the Lake Arlington watershed within five stream miles upstream of the pool level of Lake Arlington (550.0 feet, mean sea level)." Therefore, the Executive Director has preliminarily determined that the Watershed Protection Rules at 30 TAC §§ 311.61-311.66 do not apply to the proposed discharge. This preliminary determination can be reexamined and may be modified if new information is received.

On June 31, 2010, the TCEQ adopted amendments to TSWQS established numerical nutrient criteria for 75 reservoirs in Texas. The TCEQ evaluates applications for the domestic discharge that are determined to be near a reservoir to determine if an effluent limit is needed for total phosphorus (TP) or, in appropriate situations, total nitrogen (TN) to prevent violation of numerical nutrient criteria and/or preclude excessive growth of aquatic vegetation. Permit renewals discharges may also be evaluated for potentially significant concentrations of TP (and if appropriate, TN) on a case-by-case basis. The nutrient screening procedures constitute the basis for the antidegradation review for nutrients. Additional factors for the antidegradation review(s) can be considered as appropriate to further address potential nutrient impacts of concern to sensitive water bodies.

The Applicants proposed increase in loading was initially screened to determine whether sufficient potential for degradation exists to require further analysis. This initial screening procedure does not define degradation. It is intended only as general guidance to indicate when an increase in loading is small enough to preclude the need for additional evaluation.

The applicant increase in permitted loading will still attain all water quality standards and the discharge is not relatively large. The cumulative effect of repeated small increases in successive permit actions or from multiple discharges may require additional screening evaluation, even though the current permit application may be for a less than 10% increase in loading for any constituents of concern. Increases in permitted loading of 10% or greater are not automatically presumed to constitute degradation, but will receive further evaluation.

The TCEQ and the EPA currently have no rules or policies in place to address personal care products, also known as "emerging contaminants." Both agencies are reviewing the issue and expect to be able to address it in the future. However, this issue is currently outside the scope of the TCEQ's domestic wastewater regulatory authority.

The draft permit requires the facility to chlorinate for disinfection purposes. Disinfection by chlorination is designed to remove harmful bacteria in the effluent and most other disease causing organisms. TCEQ rules require disinfection in a manner conducive to the protection of both public health and aquatic life by requiring a minimum retention time for the wastewater in the chlorination chamber and a minimum chlorine residual to continue disinfection after discharge. The rules and draft permit also set a maximum chlorine residual that will not impact aquatic life in the receiving waters.

**COMMENT 6: (Operator)**

Darrel Andrews, Assistant Director of the Environmental Division of Tarrant Regional Water District, commented that the Applicant, which would be required to employ a Class D operator to operate the proposed facility, was agreeable to adding a provision to the draft permit requiring the employment of a Class C operator. Mr. Andrews asked that a provision requiring the employment of a Class C operator be included in the draft permit. Julia J. Hunt, P.E., Director of Water Utilities for the City of Arlington Water Utilities Department, commented that she was concerned about package plants being able to maintain licensed operators with the appropriate education level needed to operate the facilities.

**RESPONSE 6:**

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 proposed facility must be operated by a chief operator or an operator holding a Category D 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.

**COMMENT 7:** (Monitoring and Reporting)

William Jones raised several issues associated with the Monitoring and Reporting requirements in the draft permit, including: (1) the reliability of self-reporting, and (2) whether written notification of noncompliance that endangers human health, safety, or the environment within 5 working days of becoming aware of the noncompliance is adequate. Michael Leonhardt commented that the draft permit has several "outs" for the owner, and daily rather than yearly monitoring should be required. Mr. Leonhardt commented that Tarrant County does not have enough manpower to inspect and monitor the proposed facility. Frank Stalling asked who will monitor the proposed treatment facility to ensure that it meets standards. Mr. Stalling also asked how often the proposed discharge would be tested.

**RESPONSE 7:**

The draft permit requires the permittee to analyze the treated effluent prior to discharge and provide monthly reports to TCEQ that include the results of the analyses. All samples must be collected and analyzed according to 30 TAC Chapter 319 of TCEQ's rules, Subchapter A, Monitoring and Reporting System. The draft permit requires the permittee to monitor the flow five times per week by instantaneous measurement, to monitor the 5-day biochemical oxygen demand, total suspended solids and minimum dissolved oxygen once per week by grab sample, to monitor the chlorine residual five times per week by grab sample, and to monitor the pH once per month by grab sample. Additionally, the permittee is subject to administrative, civil and criminal penalties for negligently or knowingly violating the CWA, TWC Chapters 26, 27, and 28, and Texas Health and Safety Code Chapter 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 by the permit. This includes monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by the permit or violating any other requirement imposed by state or federal regulations. All laboratory tests submitted to the TCEQ to demonstrate compliance with the permit must meet the requirements of the Commission's rules at 30 TAC Chapter 25, regarding Environmental Testing Laboratory Accreditation and Certification. The draft permit also authorizes members of the Commission and its employees and agents 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.

**COMMENT 8:** (Compliance and Enforcement)

Frank Stalling asked what remedies are available to nearby landowners, and what the time frame for enforcing of those remedies is. Mr. Stalling also asked what rights he has, and who he should notify if those rights are violated. Mr. Stalling asked who he should report violations of the permit to.

**RESPONSE 8:**

If nearby landowners suspect incidents of noncompliance with the permit or TCEQ rules they may be reported to TCEQ by calling toll-free 1-888-777-3186 or by calling the TCEQ Region 4 Office in Fort Worth at (817) 588-5800. Citizen complaints may also be filed on-line at <http://www.tnrcc.state.tx.us/cgi-bin/enforcement/complaints>. If the Applicant fails to comply with all requirements of the permit, the facility is subject to administrative enforcement action, fines, and penalties by the commission. In addition, 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. The issuance of this permit does not limit the ability of nearby landowners to use common law remedies to seek redress for any interference with the use and enjoyment of their property.

**COMMENT 9:** (Noise)

William Jones commented that the proposed facility should be located on the far side of the Applicant's property so that trees could provide a noise buffer. Hon. Chris Turner expressed concern regarding noise emanating from the proposed facility. Debra Smith and Robert Smith commented that a compressor running 24 hours a day would cause noise pollution. Michael Leonhardt commented that a compressor running 24 hours a day would cause noise that is not needed in the area. Frank Stalling asked what the expected noise level from the proposed facility is, and whether a noise barrier would be required. Mr. Stalling also asked if there were any noise restrictions on the proposed facility's power plant. Vernal Tolle and Margaret Tolle asked what kind of noise the proposed facility will create.

**RESPONSE 9:**

The Legislature has delegated the TCEQ the responsibility of protecting the state's rivers, lakes, and coastal waters when evaluating wastewater discharge permits. The TPDES permitting process is limited to controlling the discharge of pollutants into water in the state. Noise concerns are outside the scope of a TPDES permit application review. The draft permit does not authorize the

creation of a nuisance. The issuance of the draft permit does not limit an individual's ability to seek common law remedies for nuisance.

**COMMENT 10:** (Odor and Sludge)

Hon. Chris Turner expressed concern regarding odor emanating from the proposed facility. Debra Smith and Robert Smith commented that the odor from the existing smaller system is unbearable at times. Donald Kinkade and Carl Moore expressed concern regarding odor and sludge problems. Erwin Kraehemann commented that occasionally odor had emanated from the existing sewage system. Michael Leonhardt commented that homeowners just off of 1187 FM have stated that odors emanate from the existing sewage system on occasion. Ronald W. Rickard, Vernal Tolle, and Margaret Tolle commented that odor emanates from the Applicant's sewage system after a heavy rain. Frank Stalling asked whether the provision of the draft permit requiring sewage sludge testing once during the term of the permit was a misprint. Mr. Stalling also raised concerns regarding odor emanating from the proposed facility. Richard Wilson raised odor concerns associated with the proposed discharge.

**RESPONSE 10:**

30 TAC § 309.13(e) requires that the Applicant meet one of three options to abate and control nuisance odor. Those options are:

1. Lagoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc.) may not be located closer than 500 feet to the nearest property line. All other wastewater treatment plant units may not be located closer than 150 feet to the nearest property line. The Applicant must hold legal title or have other sufficient property interest to a contiguous tract of land necessary to meet the distance requirements specified in this paragraph during the time effluent is disposed by irrigation;
2. The Applicant must submit a nuisance odor prevention request for approval by the ED; or
3. The Applicant must submit sufficient evidence of legal restrictions prohibiting residential structures within the part of the buffer zone not owned by the Applicant.

According to the permit application, the Applicant will meet the buffer zone requirements by ownership. If nearby residents experience nuisance odor conditions or any other suspected incidents of noncompliance with the permit or TCEQ rules they may be reported to TCEQ by calling toll-free 1-888-777-3186 or by calling the TCEQ Region 4 Office in Fort Worth at (817) 588-5800. Citizen complaints may also be filed on-line at <http://www.tnrcc.state.tx.us/cgi-bin/enforcement/complaints>. If the Applicant fails to comply with all requirements of the permit, the facility is subject to administrative enforcement action, fines, and penalties. Finally, the issuance of this permit does not limit the

ability of nearby landowners to use common law remedies to seek redress for any interference with the use and enjoyment of their property.

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. Details of the Sludge Provisions are provided on pages 12 through 22 of the draft permit. The draft permit authorizes the permittee 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. Finally, it is TCEQ's standard practice that sewage sludge be tested once during the term of the permit for mechanical treatment facilities with a permitted flow of less than one million gallons per day, and annually for mechanical treatment facilities with a permitted flow of equal or greater than one million gallons per day and prior to sludge disposal for all natural treatment facilities.

**COMMENT 11:** (Drinking Water)

Donald Kinkade and Carl Moore commented that the proposed discharge could affect drinking water. Mr. Moore asked if there have been enough cumulative studies conducted to know the impact of the proposed discharge to the City of Arlington's drinking water.

**RESPONSE 11:**

Generally, 30 TAC § 305.45(a)(6)(A) requires that applicants submit maps of a sufficient quality, size, and scale capable of sufficiently illustrating wells, springs, other surface water bodies, and water in the state. During the application process, the Applicant provided a complete original USGS Topographic Quadrangle map of a sufficient quality, size, and scale that indicates, among other things, public water supply wells within a one-mile radius of the proposed facility location. Additionally, 30 TAC § 309.13 requires that a wastewater treatment plant unit may not be located closer than 500 feet from a public water well or 250 feet from a private water well.

On this map provided by the Applicant, no private water supply wells were identified within one mile of the proposed facility location. Additionally, based on the maps provided by the Applicant, no wastewater treatment plant units would be located within 250 feet of a private well. Based on the maps submitted, the Applicant has complied with applicable rules regarding facility location in relation to public and private wells.

**COMMENT 12:** (Groundwater)

Richard Wilson commented that the proposed discharge will contaminate groundwater.

**RESPONSE 12:**

The Water Quality Division has preliminarily determined that the draft permit has been developed in accordance with the Texas Surface Water Quality Standards, which ensure that the effluent discharge is protective of aquatic life, human health, and the environment. The review process for surface water quality is conducted by the Standards Implementation Team and Water Quality Assessment Team surface water modelers. The Water Quality Division has determined that if the surface water quality is protected, then the groundwater quality in the vicinity will not be impacted by the discharge.

**COMMENT 13:** (Location of the Proposed Facility)

Hon. Chris Turner asked for clarification of the location of the proposed facility in relation to the nearest property line. Michael Leonhardt commented that the proposed system is going to be installed too close to residences.

**RESPONSE 13:**

TCEQ rules prohibit permittees from locating wastewater treatment plant units closer than 150 feet from the nearest property line. Based on the information provided in the application, the Applicant will meet this buffer zone requirement through ownership.

**COMMENT 14:** (Private Property)

Jack Johnson commented that he does not want the proposed discharge to run across his property. William Jones commented that the Applicant is intends to discharge wastewater across private property, despite the prohibition contained on page one of the draft permit. Hon. Chris Turner asked whether the treated effluent would drain onto private property. Carl Moore commented that he believes that the proposed discharge will flow across private property. Mr. Moore also commented that the proposed discharge will be dumped onto neighboring properties. Les Parker commented that the proposed discharge will flow across his private property. Richard Wilson commented that the Applicant does not have the right to discharge on others' property.

**RESPONSE 14:**

Texas Water Code (TWC) § 26.027 grants the TCEQ the authority to issue and amend permits for the discharge of waste or pollutants into or adjacent to water

in the state. "Water in the state" is defined as groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico, inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state. See TWC § 26.001(5). From the USGS map submitted by the Applicant as part of its application and observations made by Executive Director staff during the site visit, the unnamed tributary has a defined bed and banks; and therefore, meets the regulatory definition of water in the state.

The issuance of this permit does not grant the permittee the right to use private or public property to convey wastewater along the discharge route described therein. The issuance of this permit does not authorize any invasion of personal rights, or any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire any property rights that may be necessary to use the discharge route. The issuance of this permit does not limit the ability of nearby landowners to use common law remedies to seek redress for any interference with the use and enjoyment of their property.

**COMMENT 15:** (Discharge Route and Alternative Methods of Conveyance and Disposal)

Carl Moore requested that the Applicant not be granted a permit until they get an approved discharge route that is satisfactory to the community. Mr. Moore asks that the Applicant consider piping the effluent to Elm Creek. Mr. Moore also commented that the Applicant should put in its own disposal system and dump wastewater on its own property. Les Parker commented that the Application should pipe their effluent underground. Michael Leonhardt commented that the Applicant should utilize his own aerobic system and private drain field. Frank Stalling and Richard Wilson commented that the proposed discharge should be contained on the Applicant's property. Mr. Stalling commented that all the residences in the area have septic tanks, and none are allowed to discharge liquids into the bar ditch.

**RESPONSE 15:**

Under certain circumstances such as we have here, TCEQ rules do not allow the Executive Director to mandate a different discharge route or alternative means of conveyance and disposal than that proposed by an applicant. Executive Director staff evaluates whether the discharge route and method(s) of disposal proposed in the application comply with the applicable rules and regulations. After reviewing the discharge route and method of disposal proposed by the Applicant, the Executive Director has preliminarily determined that the effluent limits contained in the draft permit will be protective of human health and environmental quality.

**COMMENT 16:** (Regionalization)

Julia J. Hunt, P.E., Director of Water Utilities for the City of Arlington Water Utilities Department, commented that the City of Arlington, as a member of the North Central Texas Council of Governments (NCTCOG) Water Resources Committee would prefer to see a regional effort toward wastewater treatment. Ms. Hunt commented that the permitting of individual package plants for wastewater treatment is non-centralized and difficult for watershed monitoring. Michael Leonhardt asked why sewage at the Applicant's facility cannot be piped to Fort Worth's sewage disposal plant 6 miles from the proposed facility. Debra Smith, Robert Smith, and Michael Leonhardt commented that it would be in the State's best interest to forgo permitting this facility, and wait until the area is annexed by the City of Fort Worth, who would then be responsible for installing storm drains and providing sewer service. Frank Stalling asked whether it is likely that the proposed facility will be integrated into an area-wide system in the near future.

**RESPONSE 16:**

It is the policy of the state to "encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state." See TWC § 26.081(a). Permits for domestic wastewater treatment plants are granted subject to this policy. The TCEQ reserves the right to amend any domestic wastewater permit, in accordance with applicable procedural requirements, to require the system covered by the permit to be integrated into an area-wide system. 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. The Executive Director is currently not aware of a regional or area-wide waste collection, treatment, or disposal system within a three mile radius that currently has the capacity to accept the 20,000 gallons per day that the Applicant has requested to discharge.

**COMMENT 17:** (Notice)

Debra Smith and Robert Smith commented that they did not receive notice of the proposed facility until very late in the process. Jeffery Griffith commented that he did not receive notice of the application. Mr. Griffith also commented that he did not receive notification of any zoning changes to the Applicant's property. Michael Leonhardt commented that he had just recently received his notice and that many people he has spoken to did not receive notice. Carl Moore

commented that only he and one of his neighbors received notice regarding this permit application.

**RESPONSE 17:**

TCEQ rules and policies require notification of adjacent landowners, i.e., landowners surrounding the applicant's property and landowners surrounding the point of discharge and on both sides of the discharge route for one full stream mile downstream of the point of discharge for new applications for wastewater discharge permits. While Debra Smith, Robert Smith, Michael Leonhardt, and Carl Moore were identified by the Applicant as adjacent, Jeffery Griffith was not; therefore, Mr. Griffith was not sent a mailed notice of the permit application.

**COMMENT 18:** (Notice of Violations)

Julia J. Hunt, P.E., Director of Water Utilities for the City of Arlington Water Utilities Department, asked whether the City of Arlington be notified if a violation occurs at the proposed facility.

**RESPONSE 18:**

Under the definitions and standard permit conditions section for the draft permit the applicant is required to conduct self-reporting to the commission. 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 - 319.1. All this information is public record and is available to the City of Arlington. .

**COMMENT 19:** (Property Value)

Debra Smith, Robert Smith, and Michael Leonhardt commented that the proposed facility will decrease their property value and negatively impact their ability to resell their property. Donald Kinkade and Carl Moore commented that the proposed facility could cause a possible devaluation of property and quality of life in the area.

**RESPONSE 19:**

A proposed facility's potential impact on surrounding property values is outside the scope of the normal evaluations of a wastewater discharge permit application. The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters.

**COMMENT 20:** (Sampling)

William Jones asked whether, by allowing the Applicant to use the arithmetic average (weighted by flow) of all values in the previous four consecutive months as the "daily average concentration" when four samples are not available in a calendar month, the TCEQ is making an exception to its rules.

**RESPONSE 20:**

Item 2.a. of the Definitions and Standard Permit Conditions section of the draft permit allows, in absence of four samples in a calendar month, the daily average concentration to be calculated by taking the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements. This requirement is intended to allow facilities that may have an intermittent flow during a no activity season (e.g., schools and campsites) to use the previous four consecutive month period consisting of at least four measurements to come up with the statistically most acceptable average. Provisions of this requirement should not be interpreted as an exception to the TSWQS or a relaxation of permit conditions.

**COMMENT 21:** (Maintenance)

Vernal Tolle and Margaret Tolle asked, if the Applicant can't maintain the existing smaller unit, what assurances they have that the Applicant will be able to maintain the proposed facility. Michael Leonhardt commented that the Applicant cannot maintain the current system, and he does not believe the Applicant will be able to maintain the proposed system.

**RESPONSE 21:**

Permittees are required ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained at all times. If nearby landowners suspect incidents of noncompliance with the permit or TCEQ rules they may be reported to TCEQ by calling toll-free 1-888-777-3186 or by calling the TCEQ Region 4 Office in Beaumont at (817) 588-5800. Citizen complaints may also be filed on-line at <http://www.tnrcc.state.tx.us/cgi-bin/enforcement/complaints>. If the Applicant fails to comply with all requirements of the permit, the facility is subject to administrative enforcement action, fines, and penalties.

**COMMENT 22:** (Misrepresentation)

William Jones commented that the Applicant has misrepresented or failed to disclose fully all relevant facts in its application.

**RESPONSE 22:**

TCEQ rules require the signatory to a TPDES permit application to certify that the information submitted as part of the application is, to the best of their knowledge and belief, true, accurate, and complete. The signatory must also acknowledge that they are aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations. In the event that an applicant or 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 must promptly submit such facts or information. A permit may be modified, suspended, or revoked, in whole or in part, if it is determined that the permit was obtained by misrepresentation or failure to disclose fully all relevant facts. In his comment, Mr. Jones failed to identify any misrepresentation or nondisclosure by the Applicant. At this time, the Executive Director is not aware of any nondisclosure or misrepresentation contained in the Applicant's TPDES application.

**COMMENT 23:** (Permit Language)

Frank Stalling commented that the term "unless otherwise specified" is used in the draft permit. Mr. Stalling asked how these "otherwise specified procedures" were made available to the public and interested parties.

**RESPONSE 23:**

"Unless otherwise specified in this permit..." is used throughout the draft permit in provisions that are generally applicable to domestic wastewater treatment facilities. These provisions may be altered by specific provisions found in the "Other Requirements" section of the permit that are unique to subject facility. The public and interested parties are made aware of these provisions and procedures by their inclusion in draft permit.

**COMMENT 24:** (Bypass)

Frank Stalling asked when an anticipated bypass is permissible, and what limits are placed on anticipated bypasses.

**RESPONSE 24:**

In accordance with 30 TAC § 305.535(a), a 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; however, only if the bypass is essential for maintenance to assure efficient operation. Additionally, if the permittee knows in advance the need for bypass, it may apply to the TCEQ for a Water Quality Emergency Order or Temporary Order pursuant to 30 TAC §§ 35.301-35.303.

**COMMENT 25:** (Backup/Failsafe Systems)

Ronald W. Rickard commented that an accident at the proposed facility will affect nearby residents and those who live along Village Creek and Lake Arlington. Frank Stalling asked what testing methods will be used to ensure failsafe systems are adequate, and whether such testing occurs periodically. Mr. Stalling commented that there are frequently power interruptions in the area that last for multiple days.

**RESPONSE 25:**

Permittees are required to take certain steps to minimize the possibility of an accidental discharge of untreated wastewater. For example, the applicant 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. Also, 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 is required to obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities.

Permittees are also required to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained at all times. 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.

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.

Finally, the plans and specifications for the design of domestic sewage collection and treatment works associated with any domestic permit must be approved by TCEQ prior to construction. Failure to secure TCEQ approval before starting construction of a wastewater treatment plant is a violation of TCEQ rules.

**COMMENT 26:** (Confidential Documents)

Frank Stalling asked whether the Applicant submitted any confidential documents with its application.

**RESPONSE 26:**

Currently, no confidential documents have been submitted by the Applicant as part of its TPDES permit application. A copy of the application was made available for public viewing at the location identified in the NORI and NAPD notices. Currently the application, draft permit and all correspondence related to the application is in the Office of the Chief Clerk where the public can obtain copies.

**COMMENT 27:** (Miscellaneous)

Darrel Andrews, Assistant Director of the Environmental Division of Tarrant Regional Water District, commented that he encourages the TCEQ to develop a methodology to measure the impact of proposed discharges to reservoirs on a watershed basis, rather than a permit-by permit basis. William Jones commented that the Applicant's proposed addition of mobile homes will cause overcrowding. Mr. Jones also commented that the trailer across the street from his property is an eyesore, and asked why the Applicant can't keep the front of the property mowed. Michael Leonhardt commented that the land could bring in more state revenue and taxes by building new homes on the land instead of crime-breeding, noisy, and drug-related, uncontrolled mobile home park. Carl Moore asked that the TCEQ prohibit the Applicant from expanding his mobile home park. Frank Stalling asked how much the facility can expand beyond what the permit allows. Debra Smith, Robert Smith, and Michael Leonhardt commented that there was not adequate police and fire protection for additional mobile homes and RVs. Frank Stalling commented that there was no plan to deactivate the proposed plant in the event the operators go into financial default or bankruptcy. Vernal Tolle and Margaret Tolle asked what kind of traffic the proposed facility will create.

**RESPONSE 27:**

These issues are outside of the scope of normal evaluations for a wastewater discharge permit application. 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. The Executive Director does not consider overcrowding, facility aesthetics, tax revenue, police and fire protection, financial default, or traffic concerns when reviewing wastewater applications and preparing draft permits.

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

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

Respectfully submitted,

Texas Commission on Environmental Quality

Mark Vickery, P.G.  
Executive Director

Robert Martinez, Director  
Environmental Law Division

By Michael Pan / For

Timothy J. Reidy, Staff Attorney  
Environmental Law Division  
State Bar No. 24058069  
P.O. Box 13087, MC 173  
Austin, Texas 78711-3087

(512) 239-0969  
REPRESENTING THE EXECUTIVE  
DIRECTOR OF THE TEXAS COMMISSION  
ON ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

I certify that on December 22nd, 2010, the "Executive Director's Response to Public Comment" for TCEQ Permit No. WQ0014970001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

Michael Pan / For

Timothy J. Reidy, Staff Attorney  
Environmental Law Division  
State Bar No. 24058069

**Attachment C –  
Compliance History Report**

## Compliance History

Customer/Respondent/Owner-Operator:	CN603648817 PHW, EMW, AWB & EB TEXAS, LLC	Classification: AVERAGE	Rating: 3.01
Regulated Entity:	RN105899389 SHADY HILL OAKS WASTEWATER TREATMENT PLANT	Classification: AVERAGE BY DEFAULT	Site Rating: 3.01
ID Number(s):	WASTEWATER PERMIT WASTEWATER EPA ID		WQ0014970001 TX0132586
Location:	5566 MITCHELL SAXON RD, FORT WORTH, TX, 76140		
TCEQ Region:	REGION 04 - DFW METROPLEX		
Date Compliance History Prepared:	March 03, 2011		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	March 08, 2005 to March 03, 2011		
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? No
3. If Yes, who is the current owner/operator? N/A
4. If Yes, who was/were the prior owner(s)/operator(s)? N/A
5. When did the change(s) in owner or operator occur? N/A
6. Rating Date: 9/1/2010 Repeat Violator: NO

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgments, and consent decrees of the State of Texas and the federal government.  
.....
  - 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).
  - 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 –  
GIS Map**

**PHW, EMW, AWB & EB Texas, LLC**  
**TPDES Permit No. WQ0014970001**  
**Map Requested by TCEQ Office of Legal Services**  
**for Commissioners' Agenda**



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

March 1, 2011



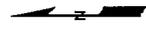
Projection: Texas Statewide Mapping System  
 (TSM/S)  
 Scale 1:14,000

**Legend**

- Property Boundary
- Point of Discharge

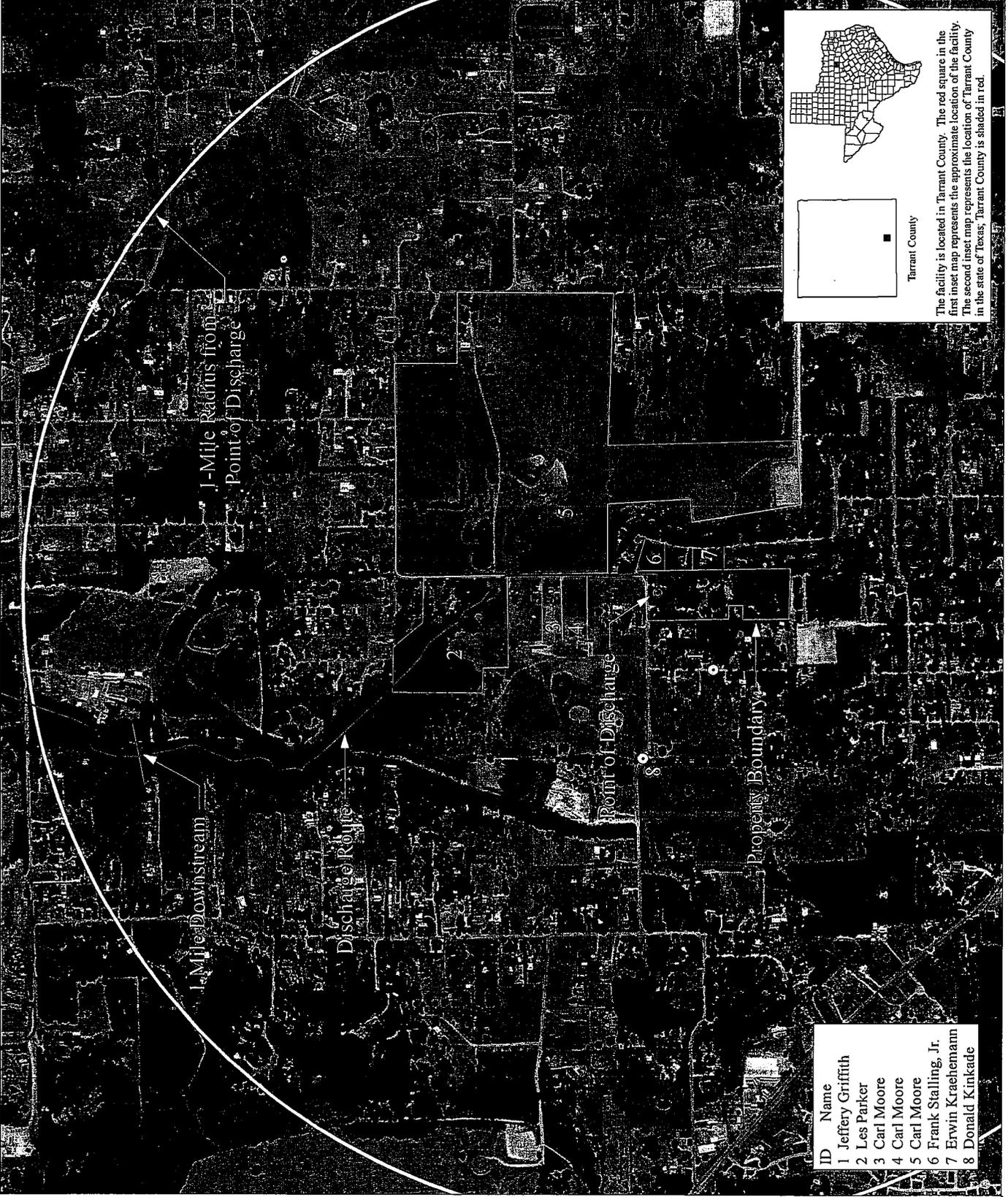
Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The vector data are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this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

This map depicts the following:  
 (1) The approximate location of the property boundary. This is labeled "Property Boundary".  
 (2) Circle and arrow depicting 1-mile radius. This is labeled "1-Mile Radius from Point of Discharge".  
 (3) Lines and points representing requestor's property. These are labeled with a number corresponding to the list on the map.  
 (4) The discharge route. This is labeled "Discharge Route".  
 (5) The discharge point. This is labeled "Point of Discharge".



This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-5800.

IMcB/Dm/engr CRP-3-14-09

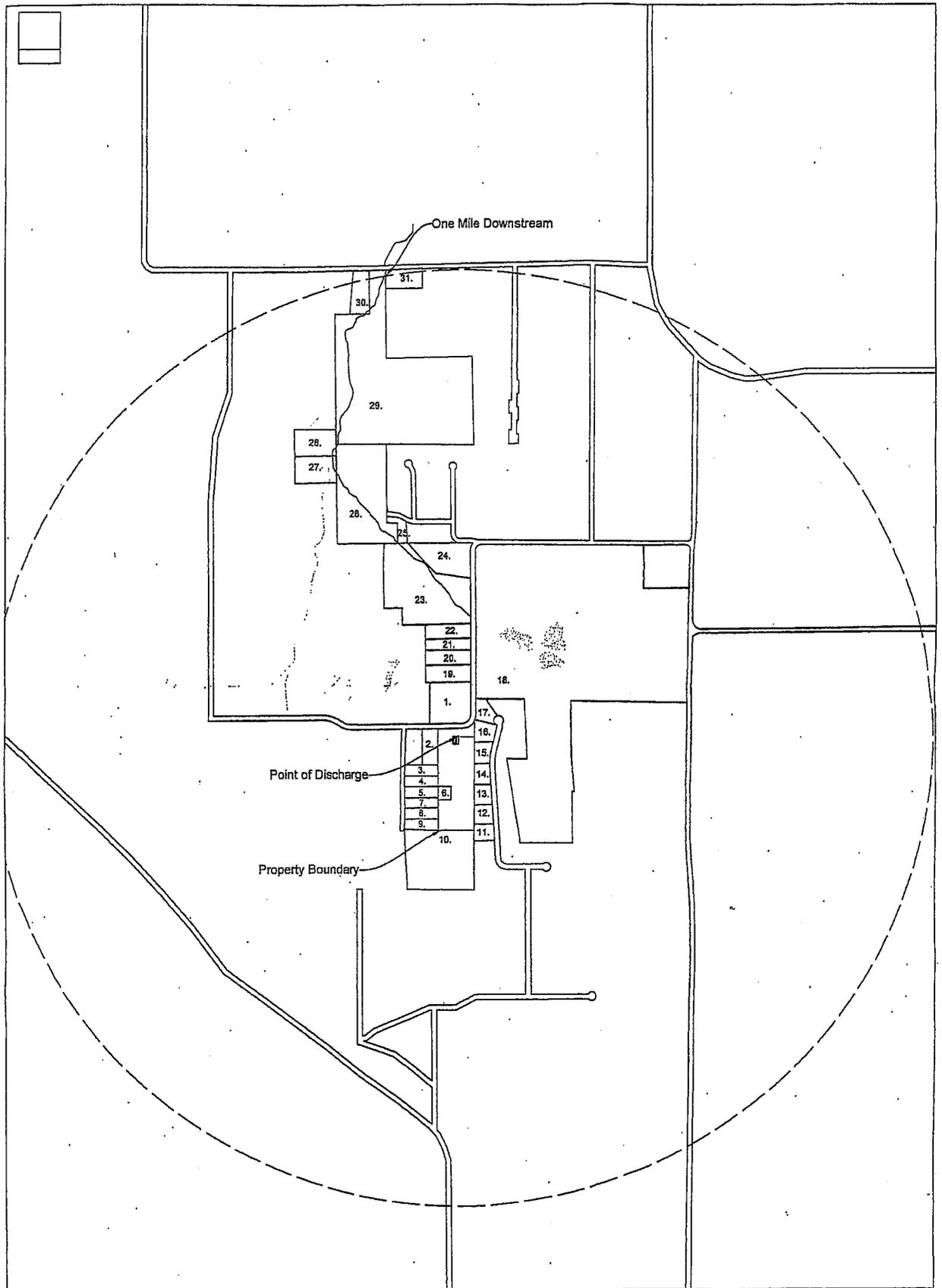


Tarrant County

The facility is located in Tarrant County. The red square in the first inset map represents the approximate location of the facility. The second inset map represents the location of Tarrant County in the state of Texas. Tarrant County is shaded in red.

ID	Name
1	Jeffery Griffith
2	Les Parker
3	Carl Moore
4	Carl Moore
5	Carl Moore
6	Frank Stalling, Jr.
7	Erwin Kraehemann
8	Donald Kinkade

**Attachment E –  
Landowners Map**



<p>Date <b>January 28, 2010</b></p> <p>Drawn By <b>CPC jbh</b></p> <p>Scale <b>1" = 1000'</b></p>	 <p>180 N. Newton Dr. Suite 402 Bloomington, Texas 75801 Phone/Fax: (254) 588-8132 Email: cca@ceecorp.com Registered Professional Engineer</p>	<p><b>Shady Hill Oaks MHP &amp; RV Park</b></p> <p><b>Affected Landowners Map</b></p>	<p><b>Exhibit III</b></p>
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# Phw, Emw, Awb & Eb Texas, LLC

## ADJACENT LANDOWNERS

### Exhibit V

#### Number

1. WILLIAM A. & TAMMY JONES  
5555 MITCHEL SAXON RD.  
FORT WORTH, TX 76140-8021
2. GARY & CHRISTINE GLOVER  
5540 MITCHELL SAXON RD.  
FORT WORTH, TX 76140-8020
3. JOHN S. & MELISSA L. BAGWELL  
312 MARTI CT.  
MANSFIELD, TX 76063-5920
4. WILLIAM KEVIN KILLIAN  
6043 CAREY RD.  
FORT WORTH, TX 76140-8011
5. JIMMIE JOAN CAREY  
60601 CAREY RD  
FORT WORTH, TX 76140-8011
6. WALLAR TEXAS LLC  
EDWIN D & ALLISON BLAND  
6909 WOODED ACRES TRL  
MANSFIELD, TX 76063-4905
7. E.A. & STEPHANIE LOTZ  
6065 CAREY RD  
FORT WORTH, TX 76140-8011
8. RICHARD & CRYSTAL ROBBINS  
6097 CAREY RD  
FORT WORTH, TX 76140-8011
9. CLAUDIA JANE KELLEY  
6109 CAREY RD  
FORT WORTH, TX 76140-8013

10. DONALD R. CHRISTIAN  
309 CENTER LANE  
FORT WORTH, TX 76140-9503
11. M.J. & TULAY LEONHARDT  
1012 OAK TREE DR  
FORT WORTH, TX 76140-9725
12. ROBERT C. & DEBRA L. SMITH  
1014 OAK TREE DR  
FORT WORTH, TX 76140-9725
13. VERNAL & MARGARET TOLLE  
1061 OAK TREE DR  
FORT WORTH, TX 76140-9725
14. ERWIN & PAMELA KRAEHMANN  
1018 OAK TREE DR  
FORT WORTH, TX 76140-9725
15. PHILLIP A. & DONNA MANN  
1020 OAK TREE DR  
FORT WORTH, TX 76140-9725
16. FRANK STALLINGS, JR.  
STALLING JR. REV TRUST  
1022 OAK TREE DR  
FORT WORTH, TX 76140-9725
17. RICHARD & CINDY WILSON  
1024 OAK TREE DR  
FORT WORTH, TX 76140-9725
18. CARL R & VALINDA MOORE  
PO BOX 1348  
KENNEDEALE, TX 76060-1348
19. CARL R & VALINDA MOORE  
PO BOX 1348  
KENNEDEALE, TX 76060-1348
20. CARL R & VALINDA MOORE  
PO BOX 1348  
KENNEDEALE, TX 76060-1348
21. GERALDINE N GRAVES, TRUSTEE  
432 HCR 1443  
BLUM, TX 76627-3187

22. RONALD & MYRA SUE RICKARD  
PO BOX 40  
KENNEDEALE, TX 76060-0040
23. LESTER D. PARKER  
5609 MITCHELL SAXON RD.  
FORT WORTH, TX 76140-8023
24. MARK B & MICHELE M WINDSOR  
5611 MITCHELL SAXON RD  
FORT WORTH, TX 76140-8023
25. FRANK B & JENNIE L SPANN  
9717 LANCELOT CIRCLE  
FORT WORTH, TX 76140-7919
26. JACK C JOHNSON  
5482 SHELBY ROAD  
FORT WORTH, TX 76140-7732
27. DAVID HARREL  
PO BOX 40368  
FORT WORTH, TX 76140-0368
28. ROBIN E CAGLE  
5365 BANKS RD  
FORT WORTH, TX 76140-7903
29. JACK JOHNSON  
5482 SHELBY RD  
FORT WORTH, TX 76140-7732
30. JACK JOHNSON  
5482 SHELBY RD  
FORT WORTH, TX 76140-7732
31. JACK JOHNSON  
5482 SHELBY RD  
FORT WORTH, TX 76140-7732