

TCEQ Interoffice Memorandum

TO: Chief Clerk

DATE: February 25, 2011

THRU:  Iliana Delgado, Team Leader
Water Rights Permitting Team

FROM: Michael Gill, Project Manager
Water Rights Permitting Team

SUBJECT: Veolia ES Technical Solutions, LLC
Docket No. 2011-0272-WR
WRTP 12445
CN603069626, RN105766646, RN105766661
Application No. 12445 for a Temporary Water Use Permit
Texas Water Code §11.138, Requiring Limited Mailed Notice
Neches-Trinity Coastal Basin, Jefferson County

The Executive Director received an application from Veolia ES Technical Solutions, LLC seeking a Temporary Water Use Permit pursuant to Texas Water Code §11.138 and Texas Commission on Environmental Quality Rules 30 TAC §§295.1, *et seq.*

The application was received on March 27, 2009. The application was declared administratively complete and filed with the Office of the Chief Clerk on July 16, 2009. The notice of the application was filed with the Chief Clerk on November 13, 2009, and notice was subsequently mailed to the five downstream water right holders of record in the Neches-Trinity Coastal Basin.

Because this application was declared administratively complete after September 1, 1999, the rules in Chapter 55, Subchapter G, Section 55.250 - 55.256 apply. The Chief Clerk shall mail notice to the applicant, executive director, public interest counsel, and timely hearing requestors not later than 35 days prior to the agenda setting. Applicants, the public interest counsel, and the executive director shall file a response no later than 23 days before agenda, and the hearing requestors shall reply no later than nine days before agenda.

The application is now technically complete and the staff has recommended that the application be granted based on the analysis in the technical review memos.

Below is the caption for this application:

Consideration of an application by Veolia ES Technical Solutions, LLC (Applicant) for a temporary water use permit. Temporary Water Use Permit No. 12445 would authorize Applicant to divert and use not to exceed 1,400 acre-feet of water at a maximum combined diversion rate of 6.684 cfs (3,000 gpm) within a period of one year from two

TO: Commissioners

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diversion points on an unnamed tributary of Fish Box Gully, tributary of Taylor Bayou, Neches-Trinity Coastal Basin, for industrial and domestic purposes in Jefferson County. The Commission will also consider hearing requests, responses to the requests, and replies. (Ross Henderson, Michael Gill).



Michael Gill, Project Manager
Water Rights Permitting Team

Enclosures

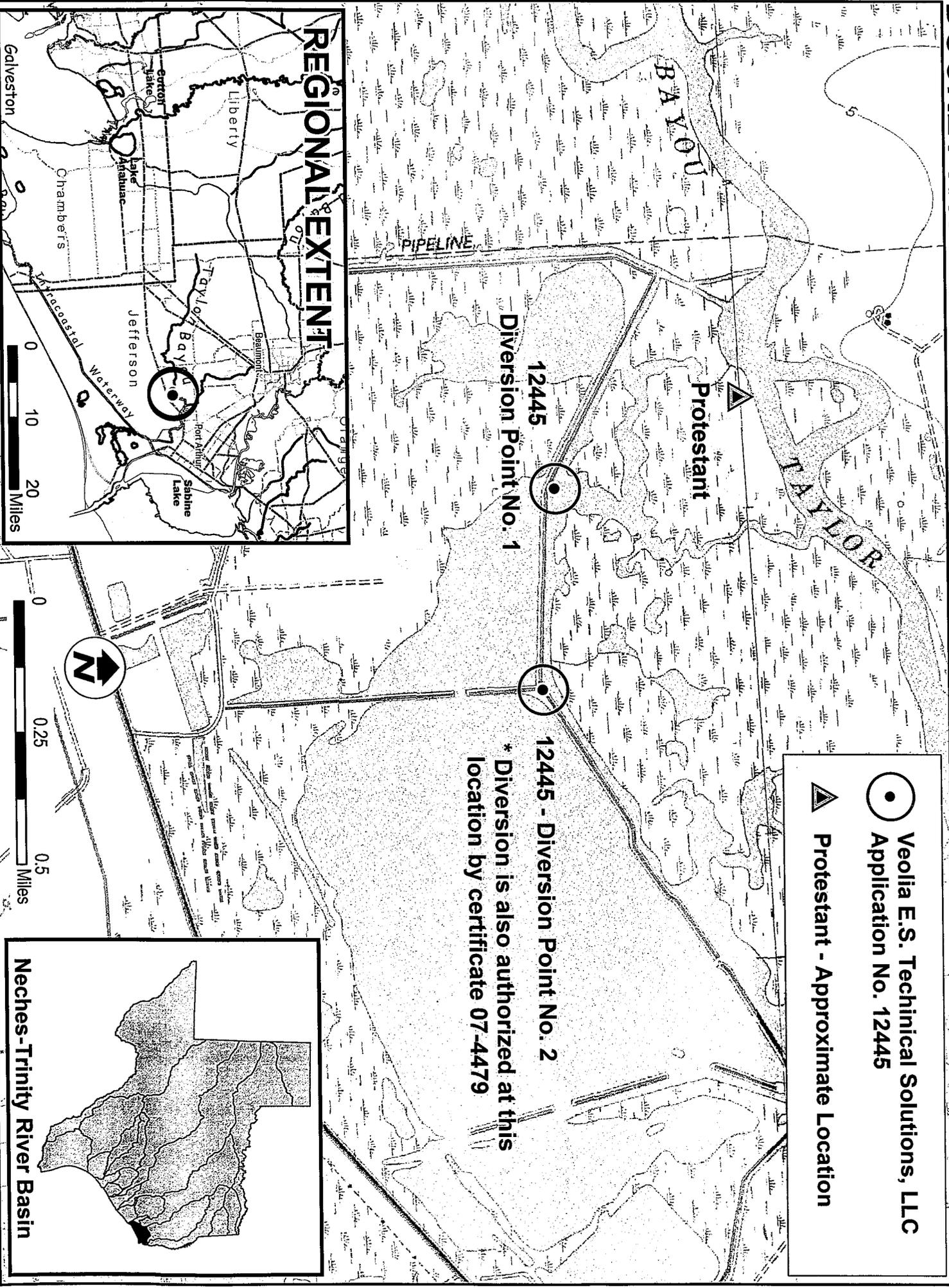
cc: Kellye Rila, TCEQ
Ross Henderson, TCEQ
Iliana Delgado, TCEQ
Kathy Alexander, TCEQ
Stephen Densmore, TCEQ
Christopher Loft, TCEQ
Justin Degrate, TCEQ



**Veolia E.S. Technical Solutions, LLC
Application No. 12445**



Protestant - Approximate Location

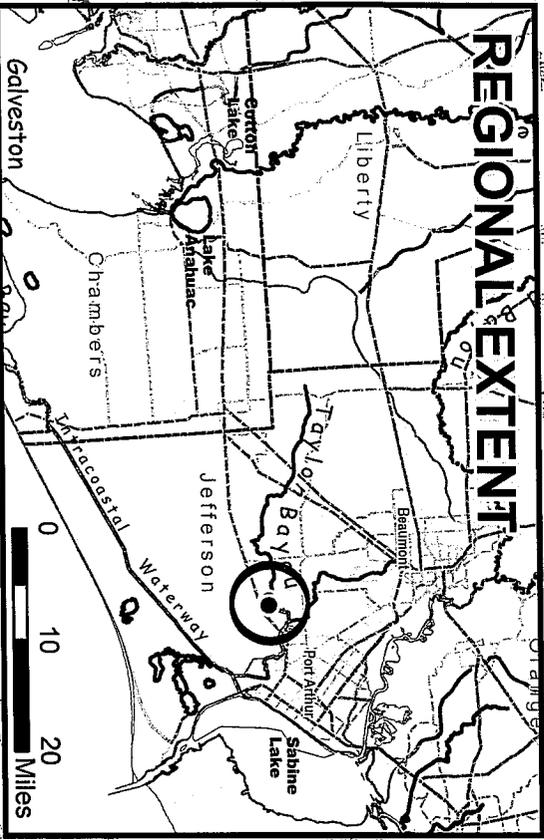


12445
Diversion Point No. 1

12445
Diversion Point No. 2

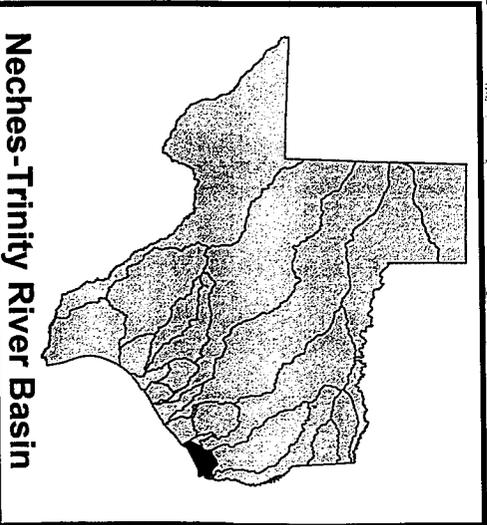
*** Diversion is also authorized at this location by certificate 07-4479**

REGIONAL EXTENT



Galveston Chambers Liberty Beaumont Taylor Bayou Port Arthur Sabine Lake

0 0.25 0.5
Miles



Neches-Trinity River Basin

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



NOTICE OF AN APPLICATION FOR A TEMPORARY WATER USE PERMIT

APPLICATION NO. 12445

Veolia ES Technical Solutions, LLC has applied for a temporary water use permit to divert and use not to exceed 2,000 acre-feet of water within a period of one year from two diversion points on an unnamed tributary of Fish Box Gully, Neches-Trinity Coastal Basin for industrial and domestic purposes in Jefferson County. More information on the application and how to participate in the permitting process is given below.

APPLICATION. Veolia ES Technical Solutions, LLC, P.O. Box 2563, Port Arthur, Texas 77643, Applicant, seeks a temporary water use permit pursuant to Texas Water Code (TWC) §11.138, and Texas Commission on Environmental Quality Rules 30 Texas Administrative Code (TAC) §§297.13, *et seq.* Notice is being mailed to the five downstream water right holders of record in the Neches-Trinity Coastal Basin pursuant to 30 TAC §295.154.

Veolia ES Technical Solutions, LLC, seeks a temporary water use permit to divert and use not to exceed 2,000 acre-feet of water within one year at a maximum combined diversion rate of 6.684 cfs (3,000 gpm) from two diversion points on an unnamed tributary of Fish Box Gully, tributary of Taylor Bayou, Neches-Trinity Coastal Basin for industrial and domestic purposes in Jefferson County. The applicant indicates both diversion points are not within a Zip Code designation; however the surrounding area is defined by Zip Code 77705. The diversion points are further described below.

Diversion Point No. 1 is located at Latitude 29.869583°N, Longitude 94.098339°W, also, bearing S 61° E, 15,900 feet from the northeast corner of the John J. French Survey, Abstract No. 23.

Diversion Point No. 2 is located at Latitude 29.869436°N, Longitude 94.092586°W, also, bearing S 57° E, 18,700 feet from the northeast corner of the John J. French Survey, Abstract No. 23.

The Commission will review the application as submitted by the applicant and may or may not grant the application as requested.

The application and partial fees were received on March 27, 2009, and additional information and partial fees were received on June 22 and September 10, 2009. The application was declared administratively complete and accepted for filing on July 16, 2009.

PUBLIC COMMENT / PUBLIC MEETING. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by December 4, 2009. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

CONTESTED CASE HEARING. The TCEQ may grant a contested case hearing on this application if a written hearing request is filed by December 4, 2009. The Executive Director can consider an approval of the application unless a written request for a contested case hearing is filed by December 4, 2009.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions for the requested permit which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically at <http://www.tceq.state.tx.us/about/comments.html>. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040 o por el internet al <http://www.tceq.state.tx.us>.

Issued: November 13, 2009

TEMPORARY WATER USE PERMIT

PERMIT NO. 12445

TYPE §11.138

Permittee: Veolia ES Technical
Solutions, LLC

Address: P.O. Box 2563
Port Arthur, TX 77643

Received: July 16, 2009

Granted:

County: Jefferson

Watercourse: unnamed tributary of
Fish Box Gully, tributary of
Taylor Bayou

Watershed: Neches-Trinity Coastal Basin

WHEREAS, after considering the recommendation of the staff relative to the above identified application, the following findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. The application is in proper form and accompanied by all necessary fees.
2. The applicant seeks to divert and use not to exceed 2,000 acre-feet of water at a maximum combined diversion rate of 6.684 cfs (3,000 gpm) within a period of one year from two diversion points on an unnamed tributary of Fish Box Gully, tributary of Taylor Bayou, Neches-Trinity Coastal Basin, for industrial and domestic purposes in Jefferson County.
3. The Executive Director has determined that there is insufficient water available to satisfy the requested diversion demand of 2,000 acre-feet of water for a one year period, but sufficient water is available at the applicant's location to divert and use not to exceed 1,400 acre-feet of water within a period of one year.
4. Notice of this application was mailed to the five downstream water right holders of record in the Neches-Trinity Coastal Basin and one request for a contested case hearing was received.

CONCLUSIONS OF LAW

1. Jurisdiction is vested to consider this application under Section 11.138 of the Texas Water Code and Sections 295.174 and 297.13 of 30 Texas Administrative Code.
2. Applicant has complied with the particular requirements of the Texas Commission on Environmental Quality.
3. The Executive Director has recommended that special conditions be included.

NOW, THEREFORE, Temporary Water Use Permit No. 12445 is issued to Veolia ES Technical Solutions, LLC subject to the following terms and conditions:

1. USE

Permittee is authorized to divert and use not to exceed 1,400 acre-feet of water from two diversion points on an unnamed tributary of Fish Box Gully, tributary of Taylor Bayou, Neches-Trinity Coastal Basin, within a one year period, for industrial and domestic purposes in Jefferson County.

2. DIVERSION

- A. Diversion Point No. 1 is located on an unnamed tributary of Fish Box Gully at Latitude 29.869583° N, Longitude 94.098339° W, also, bearing S 61° E, 15,900 feet from the northeast corner of the John J. French Survey, Abstract No. 23, Navarro County.
- B. Diversion Point No. 2 is located on an unnamed tributary of Fish Box Gully at Latitude 29.869436° N, Longitude 94.092586° W, also, bearing S 57° E, 18,700 feet from the northeast corner of the John J. French Survey, Abstract No. 23, Navarro County.
- C. The combined maximum diversion rate shall not exceed 6.684 cfs (3,000 gpm).

3. SPECIAL CONDITIONS

- A. Upon diversion and use of the water authorized herein, this temporary water use permit shall expire and be of no further force and effect.
- B. This temporary permit shall expire and become null and void one year from the date of issuance with no further Commission action.

- C. Permittee shall install and maintain a measuring device which accounts for, within 5% accuracy, the quantity of water diverted from the points authorized above in Paragraph 2. DIVERSION and maintain measurement records.
- D. Permittee shall allow representatives of the TCEQ reasonable access to the property to inspect the measuring device and records.
- E. This temporary permit is junior in priority to all existing water rights in the Neches-Trinity Coastal Basin.
- F. No diversion of water shall be made when such water is required to satisfy domestic and livestock demands downstream, or when necessary to satisfy senior and superior water rights and instream needs.
- G. The issuance of this temporary permit does not grant to the permittee the right to use private or public property for diversion of water authorized by this permit. This includes property belonging to but not limited to any individual, partnership, corporation or public 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 make any diversions authorized by this permit.

This temporary permit does not vest in its holder a permanent right to the use of water and shall in no event be construed as a commitment of the Commission to approve or disapprove any other application or request by the permittee.

Permittee agrees to be bound by the terms, conditions, and provisions contained herein, and such agreement is a condition precedent to the granting of this temporary permit.

All other matters requested in the application which are not specifically granted by this temporary permit are denied.

This temporary permit is issued subject to the Rules of the Texas Commission on Environmental Quality and to its right of continuing supervision.

For The Commission

DATE ISSUED:

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Michael Gill, Application Manager
Water Rights Permitting & Availability Section
January 25, 2010

Through: ~~A~~ Kathy Alexander, Work Leader
Surface Water Availability & Interstate Compacts Team

From: Jessica Hudock, Hydrologist
Surface Water Availability & Interstate Compacts Team

Subject: Veolia ES Technical Solutions, LLC
WRPERM 12445
CN603069626
Unnamed Tributaries of Taylor Bayou and Fish Box Gully
Neches-Trinity Coastal Basin
Jefferson County

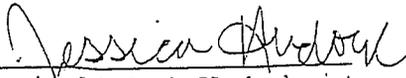
HYDROLOGY REVIEW

Application Summary

The applicant seeks a Temporary Water Use Permit to divert and use not to exceed 2,000 acre-feet of water within a one year period from an unnamed tributary of Taylor Bayou and an unnamed tributary of Fish Box Gully, Neches-Trinity Coastal Basin, at a maximum diversion rate of 6.684 cfs (3,000 gpm) for industrial and domestic purposes in Jefferson County. The application was declared administratively complete on July 16, 2009.

Hydrology Review and Conclusion

Staff reviewed the application and found that although streamflow availability is limited, a reduced amount of 1,400 acre-feet of water will likely be available within a one year period. Therefore, the applicant's diversion should have no effect on basin water rights. Staff can grant the diversion of a reduced amount of 1,400 acre-feet of water on a temporary basis.


Jessica Hudock, Hydrologist

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

To: Michael Gill, Application Manager **Date:** November 24, 2009
Water Rights Team
Water Rights Permitting & Availability Section

Through: *CL* Chris Loft, Team Leader
11/24/09 Resource Protection Team
Water Rights Permitting & Availability Section

DG
11/24/09
for Gregg Easley, Aquatic Scientist
Resource Protection Team
Water Rights Permitting & Availability Section

From: *JG* Justin Degrade, Aquatic Scientist
11-24-09 Resource Protection Team
Water Rights Permitting & Availability Section

Subject: Veolia Environmental Services Technical Solutions, LLC.
WRTP 12445
CN603069626
Water Right Application No. 12445
Taylor Bayou and an unnamed tributary of Fish Box Gully, tributary of Taylor Bayou
Neches-Trinity Coastal Basin, Jefferson County

Environmental reviews of water right applications are conducted in accordance with §11.042, §11.147, §11.1491, §11.150, and §11.152 of the Texas Water Code and with TCEQ administrative rules which include 30 TAC §297.53 through §297.56. These statutes and rules require the TCEQ to consider the possible impacts of the granting of a water right on fish and wildlife habitat, water quality, and instream uses associated with the affected body of water. Possible impacts to bays and estuaries are also addressed.

ENVIRONMENTAL ANALYSIS

Veolia ES Technical Solutions, LLC, applicant, seeks to divert and use not to exceed 2,000 acre-feet of water from two diversion points (one point on an unnamed tributary of Taylor Bayou, tributary of Taylor Bayou, Neches-Trinity Coastal Basin, and one point on an unnamed tributary of Fish Box Gully, tributary of Taylor Bayou, Neches-Trinity Coastal Basin) at a maximum combined diversion rate of 6.684 cfs (3,000 gpm) within a period of one year for industrial and domestic purposes in Jefferson County.

SUMMARY

This is a temporary request to divert and use not to exceed 2,000 acre-feet of water from two diversion points (one point on an unnamed tributary of Taylor Bayou, tributary of Taylor Bayou, Neches-Trinity Coastal Basin, and one point on an unnamed tributary of Fish Box Gully, tributary of Taylor Bayou, Neches-Trinity Coastal Basin) at a maximum combined diversion rate of 6.684 cfs (3,000 gpm) within a period of one year for industrial and domestic purposes in Jefferson County.

No special conditions are recommended for this temporary permit.

This instream use assessment was conducted using current TCEQ operation procedures and policies and available data and information. Authorizations granted to the permittee by the water rights permit shall comply with all rules of the Texas Commission on Environmental Quality, and other applicable State and Federal authorizations.

LITERATURE CITED

Ellis, L.T., W. Pohl, R. Tyler. 1997-2001. Handbook of Texas Online. The Texas State Historical Association.

TCEQ. 2004. Atlas of Texas Surface Waters: Maps of the Classified Segments of Texas Rivers and Coastal Basins. Publication No. GI-316. Texas Commission on Environmental Quality. Austin, Texas.

TCEQ. 2008. Texas Water Quality Inventory and 303(d) List. Texas Commission on Environmental Quality.

TCEQ. 2000. Texas Surface Water Quality Standards. Texas Commission on Environmental Quality.

TPWD. 1979. An Analysis of Texas Waterways. Texas Parks and Wildlife Department.