

Bryan W. Shaw, Ph.D., *Chairman*
Buddy Garcia, *Commissioner*
Carlos Rubinstein, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 11, 2011

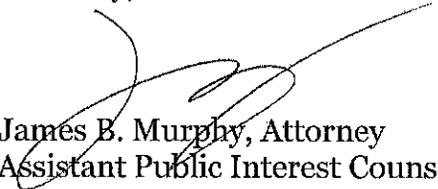
Melissa Chao, Acting Chief Clerk
Texas Commission on Environmental Quality
Office of the Chief Clerk (MC-105)
P.O. Box 13087
Austin, Texas 78711-3087

Re: **KAUFMAN COUNTY FRESH WATER SUPPLY DISTRICT 1A
TCEQ DOCKET NO. 2011-0739-MWD**

Dear Ms. Chao:

Enclosed for filing is the Office of Public Interest Counsel's Response to Requests for Hearing in the above-entitled matter.

Sincerely,


James B. Murphy, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure

TCEQ DOCKET NO. 2011-0739-MWD

**IN THE MATTER OF THE
APPLICATION OF KAUFMAN
COUNTY FRESH WATER SUPPLY
DISTRICT 1A FOR RENEWAL OF
PERMIT NO. WQ0013910001**

**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO
REQUESTS FOR HEARING**

To the Honorable Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Requests for Hearing in the above-referenced matter and respectfully shows the following.

I. Introduction

A. Background of Facility

The Kaufman County Fresh Water Supply District 1A (Applicant or District) applied to the Commission on April 8, 2010 for renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0013910001. The permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day (gpd) from Outfall 001 and a daily average flow not to exceed 350,000 gpd from Outfall 002. The application requests removal of Outfall 002, so the draft permit would authorize only the discharge of treated domestic wastewater a daily average flow not to exceed 600,000 gpd from Outfall 001.

The wastewater treatment facility is an activated sludge process plant operated in the conventional mode. Treatment units include bar screens, four aeration basins, two final clarifiers, three aerobic sludge digesters, and a chlorine contact chamber. The

facility is in operation, and located approximately 600 feet north of U.S. Highway 80, approximately two miles east of the City of Forney in Kaufman County.

The treated effluent is discharged to an unnamed tributary, then to Big Brushy Creek, then to Kings Creek, then to Cedar Creek Reservoir in Segment No. 0818 of the Trinity River Basin. The unclassified receiving water uses are limited aquatic life use for the unnamed tributary and high aquatic life use for Big Brushy Creek. The designated uses for Segment No. 0818 are high aquatic life use, public water supply, and contact recreation. Segment No. 0818 is currently listed for pH on the State's inventory of impaired and threatened waters (2008 Clean Water Act Section 303(d) list) and the Draft 2010 Integrated Report for Clean Water Act Sections 305(b) and 303(d).

B. Procedural Background

TCEQ received this application on April 8, 2010. On May 7, 2010, the Executive Director (ED) declared the application administratively complete. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit Renewal (NORI) was published on May 13, 2010 in the *Forney Messenger*. The ED issued the Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Renewal (NAPD) on November 11, 2010, and it was published on November 18, 2010 in the *Forney Messenger*. The public comment period ended on December 20, 2010. On April 15, 2011, the Office of Chief Clerk mailed the ED's decision and Response to Public Comment. The deadline to request a contested case hearing was May 16, 2011.

TCEQ received timely comments and requests for a contested case hearing from: Emily Rogers on behalf of the City of Forney on July 27, 2010, December 10, 2010, and May 9, 2011; and Brad Castleberry on behalf of the City of Terrell on August 31, 2010.

On December 10, 2010, the City of Terrell withdrew its request for a hearing. OPIC recommends granting the hearing request submitted by the City of Forney.

II. Applicable Law

The ED declared this application administratively complete on May 7, 2010. Because the application was declared administratively complete after September 1, 1999, a person may request a contested case hearing on the application pursuant to the requirements of House Bill 801, Act of May 30, 1999, 76th Leg., R.S., § 5 (codified at TEX. WATER CODE (TWC) § 5.556).

Under the applicable statutory and regulatory requirements, a hearing request must substantially comply with the following: give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request; identify the requestor's personal justiciable interest affected by the application showing why the requestor is an "affected person" who may be adversely affected by the proposed facility or activity in a manner not common to members of the general public; request a contested case hearing; list all relevant and material disputed issues of fact that were raised during the comment period that are the basis of the hearing request; and provide any other information specified in the public notice of the application.

30 TEX. ADMIN. CODE (TAC) § 55.201(d).

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." 30 TAC § 55.203(a). This justiciable interest does not include an interest common to the general public. 30 TAC § 55.203(a). Governmental entities with authority under state law over issues contemplated by the application may be considered affected persons.

30 TAC § 55.203(b). Relevant factors considered in determining whether a person is affected include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203(c).

A group or association may request a contested case hearing if:

- (1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;
- (2) the interests the group or association seeks to protect are germane to the organization's purpose; and
- (3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

30 TAC § 55.205(a). The ED, OPIC, or applicant may request the group or association provide an explanation of how the group or association meets these requirements.

30 TAC § 55.205(b).

The Commission shall grant an affected person's timely filed hearing request if:

(1) the request is made pursuant to a right to hearing authorized by law; and (2) the request raises disputed issues of fact that were raised during the comment period and that are relevant and material to the Commission's decision on the application. 30 TAC § 55.211(c).

Accordingly, responses to hearing requests must specifically address:

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

30 TAC § 55.209(e).

There is no right to a contested case hearing on an application to renew or amend a permit under Chapter 26 of the TWC if:

- (A) the applicant is not applying to:
 - (i) increase significantly the quantity of waste authorized to be discharged; or
 - (ii) change materially the pattern or place of discharge;
- (B) the activity to be authorized by the renewal or amended permit will maintain or improve the quality of waste authorized to be discharged;
- (C) any required opportunity for public meeting has been given;
- (D) consultation and response to all timely received and significant public comment has been given; and
- (E) the applicant's compliance history for the previous five years raises no issues regarding the applicant's ability to comply with a material term of the permit[.]

30 TAC § 55.201(i)(5). *See also* TWC § 26.028(d).

III. Discussion

A. Right to a Contested Case Hearing

Applicant's compliance history raises an issue regarding its ability to comply with a material term of the permit, and therefore there is a right to a contested case hearing on this application under 30 TAC § 55.201(i)(5)(E) and TWC § 26.028(d). TCEQ rated Applicant's compliance history as "high" on September 1, 2010 and "average" on

September 1, 2009. *See* Compliance History Report, available at <http://www.tceq.state.tx.us/compliance/enforcement/history/about.html> (last search July 8, 2011). However, the compliance history rating is not dispositive, because Commission rules do not refer solely to the compliance history rating but focus more broadly on likelihood of compliance: “*raises no issues* regarding the applicant’s ability to comply with a *material term* of the permit.” 30 TAC § 55.201(i)(5)(E) (emphasis added).

Applicant is currently out of compliance with several material permit terms, and therefore there is an issue regarding Applicant’s ability to comply. According to the Commission’s Central Registry, Applicant currently has eleven active Notices of Violations (NOVs) for failure to meet the limit for one or more permit parameters, all of which are classified as “moderate” violations. TCEQ Central Registry Query for Notice of Violations for Permit No. WQ0013910001 (last search July 8, 2011) (Central Registry - NOVs) (attached as Exhibit A). Three of these violations occurred subsequent to the September 2010 compliance history rating. *See* Central Registry - NOVs (violations on January 31, 2011, February 28, 2011, and March 31, 2011). A present inability to comply with an existing permit term clearly raises an issue regarding Applicant’s ability to comply with a permit term. Also, the permit term is material, evidenced by the Commission classifying the violations as moderate.

In addition, as listed in the City’s hearing request, Applicant has a history of violations, including effluent limit exceedences resulting in an agreed enforcement order on October 19, 2006 and a compliance agreement on December 31, 2009. TCEQ Central Registry Query for Effective Enforcement Orders for Permit No. WQ0013910001 (last search July 8, 2011) (Central Registry - Orders) (attached as Exhibit B). Although the

ED considers resolved the agreed enforcement order provisions 3.a and 3.b related to compliance with effluent limits, recent notices of violation demonstrate Applicant continues to have difficulty meeting effluent limits even though the facility is operating below 40% capacity. See Letter from Christopher Jordan, General Counsel for Applicant, to Mark Oliver, TCEQ Enforcement Division dated September 15, 2010, at 3 (stating that facility operates below 40% capacity) (Extension Letter) (attached as Exhibit C).

Similarly, the ED's decision to extend the compliance deadline for regionalization under agreed order provision 3.c does not eliminate the issue of ability to comply. Based on Applicant's statements in its request for an extension that interconnection is too costly and unnecessary and that prior assumptions regarding capacity needs were "terribly incorrect," it is unclear whether Applicant can ever comply with the agreed order. Extension Letter, at 3. Regionalization may not be a provision in the current permit, but inability to comply with an agreed order raises an issue regarding Applicant's ability to comply with its permit, particularly in light of the history of effluent limit violations.

Other than concerns related to compliance history, this renewal would not trigger a contested case hearing right. Applicant is not applying to increase the quantity of waste or change the discharge location. 30 TAC § 55.201(i)(5)(A). The renewal application maintains or improves the discharge limits in the original permit, and adds an additional discharge limit for bacteria. 30 TAC § 55.201(i)(5)(B). The ED did not conduct a public meeting because there were no requests, and he concluded that the number and nature of the received comments did not meet the applicable criteria. 30 TAC § 55.201(i)(5)(C). See also 30 TAC § 55.154(c) (requiring a public meeting when

the ED determines there is a substantial or significant degree of public interest in the application or a member of the legislature who represents the general area requests one). The ED's Response to Public Comment was mailed to interested persons on April 15, 2011. 30 TAC § 55.201(i)(5)(D).

B. Determination of Affected Person Status

The City of Forney timely requests a contested case hearing. The City is concerned about Applicant's ability to comply with its permit, potential adverse water quality impacts, and the timeframe for interconnection to a regional treatment system. The City argues two reasons to support affected persons status. First, Applicant and the City have entered into a service contract requiring Applicant to construct a wastewater conveyance system to transport and discharge Applicant's wastewater to the City's facility, to ultimately be conveyed to a regional treatment facility. Under an agreed enforcement order with the Commission, the Commission required Applicant to submit written certification that all discharges from Applicant's treatment facility have been diverted to the City's facility by April 2010. The City states that issuance of the draft permit without a condition requiring regionalization will harm the City's ability to plan and its rights under the contact.

Second, the City states that the location of Applicant's facility and customers demonstrates the City has a personal justiciable interest in this application. Applicant's facility is located within the City's extraterritorial jurisdiction (ETJ). A portion of the District is located within the ETJ, as are some of the customers served by Applicant's facility.

The City is an affected person under the factors in 30 TAC § 55.203(c). Cities with authority under state law over issues contemplated by the application may be considered affected persons. 30 TAC § 55.203(b). The location of Applicant's facility and customers within the City's ETJ supports affected person status. 30 TAC § 55.203(c)(2)–(4). The interconnection contract also supports affected person status because the City has an interest in regionalization, which is an interest governed by Commission rules and the Water Code's regionalization policy at TWC § 26.081. 30 TAC § 55.203(c)(1) and (6).

C. Issues Raised in the Hearing Request

The following issues have been raised in the hearing requests:

- (1) Whether the draft permit should include conditions requiring regionalization.
- (2) Whether the effluent limits in the draft permit are sufficiently stringent to meet water quality standards.
- (3) Whether the effluent limits in the draft permit will cause degradation of water quality.
- (4) Whether the effluent limits in the draft permit will protect existing uses.
- (5) Whether the draft permit is sufficiently stringent in terms of monitoring and reporting.
- (6) Whether the proposed discharge is consistent with the TMDL for Segment No. 0818 of the Trinity River Basin.

D. Issues Raised in the Comment Period

All of the issues raised in the hearing request were raised in the comment period. 30 TAC §§ 55.201(c) and (d)(4), 55.211(c)(2)(A). Based on the City's December 10, 2010 comments and contested case hearing request, it appears the City has withdrawn the issue related to the TMDL for Segment No. 0818. The remaining issues are timely filed and not withdrawn.

E. Disputed Issues

There is no agreement between the hearing requesters and the ED on the issues raised in the hearing requests.

F. Issues of Fact

If the Commission considers an issue to be one of fact, rather than one of law or policy, it is appropriate for referral to hearing if it meets all other applicable requirements. 30 TAC § 55.211(c)(2)(A). All of the issues presented are issues of fact appropriate for referral to SOAH.

G. Relevant and Material Issues

The hearing requests raise issues relevant and material to the Commission’s decision under the requirements of 30 TAC §§ 55.201(d)(4) and 55.211(c)(2)(A). In order to refer an issue to SOAH, the Commission must find that the issue is relevant and material to the Commission’s decision to issue or deny this permit. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–51 (1986) (in discussing the standards applicable to reviewing motions for summary judgment the Court stated “[a]s to materiality, the substantive law will identify which facts are material . . . it is the substantive law’s identification of which facts are critical and which facts are irrelevant that governs”). Relevant and material issues are those governed by the substantive law under which this permit is to be issued. 477 U.S. at 248–51.

TCEQ is responsible for the protection of water quality under Chapter 26 of the TWC and 30 TAC Chapters 305, 307 and 309, as well as under specific rules related to wastewater systems found at 30 TAC Chapters 30 and 217. The Texas Surface Water Quality Standards in 30 TAC Chapter 307 require the proposed permit “maintain the

quality of water in the state consistent with public health and enjoyment.” 30 TAC § 307.1. Furthermore, the proposed permit must comply with 30 TAC §§ 305.122(c), 307.1 and 309.10, which prohibit injury to private property and invasion of property rights and require minimization of exposure to nuisance conditions. In addition, Applicant is required to control and abate nuisance odor under 30 TAC §§ 307.4(b)(1) and 309.13(e). Finally, 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 the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.” TWC § 26.081(a).

All of the remaining issues are relevant and material. Applicant’s agreement to regionalize is relevant and material to the Commission’s regionalization policy at TWC § 26.081. Compliance with water quality standards, protection against water quality degradation, and protection of existing uses are all relevant and material because they are required by the Water Code and Commission rules. Similarly, monitoring and reporting are also relevant and material because they are required by the Water Code and Commission rules.

H. Issues Recommended for Referral

OPIC recommends that the following disputed issues of fact be referred to SOAH for a contested case hearing:

- (1) Whether the draft permit should include conditions requiring regionalization.
- (2) Whether the effluent limits in the draft permit are sufficiently stringent to meet water quality standards.
- (3) Whether the effluent limits in the draft permit will cause degradation of water quality.
- (4) Whether the effluent limits in the draft permit will protect existing uses.
- (5) Whether the draft permit is sufficiently stringent in terms of monitoring and reporting.

I. Maximum Expected Duration of Hearing

Commission Rule 30 TAC § 50.115(d) requires that any Commission order referring a case to SOAH specify the maximum expected duration of the hearing by stating a date by which the judge is expected to issue a proposal for decision. The rule further provides that no hearing shall be longer than one year from the first day of the preliminary hearing to the date the proposal for decision is issued. To assist the Commission in stating a date by which the judge is expected to issue a proposal for decision, and as required by 30 TAC § 55.209(d)(7), OPIC estimates that the maximum expected duration of a hearing on this application would be nine months from the first date of the preliminary hearing until the proposal for decision is issued.

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IV. Conclusion

OPIC recommends granting the hearing requests from the City of Forney on the issues referenced in Section III.H above. OPIC further recommends a hearing duration of nine months.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By: _____

James B. Murphy
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(512) 239-4014 Phone
(512) 239-6377 Fax

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2011 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Requests for Hearing was filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.

James B. Murphy



TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

Questions or Comments

Home TCEQ Home

Central Registry

Detail of: **Wastewater Permit WQ0013910001**

For: **KAUFMAN COUNTY FWSD 1A WWTP (RN102334638)**

900 CONCORD ST, FORNEY

Permit Status: **ACTIVE**

Held by: **KAUFMAN COUNTY FWSD 1A (CN602617755)**

OWNER Since 07/07/2004 View Compliance History

Mailing Address: Not on file

Notice of Violations Current TCEQ Rules

| NOV Date | Status | Citation/Requirement Provision | Allegation | Classification | Self Reporting Indicator |
|------------|----------|---|---|----------------|--------------------------|
| 03/31/2011 | ACTIVE | 2D TWC Chapter 26, SubChapter A 26.121(a) ; 30 TAC Chapter 305, SubChapter F 305.125(1) | Failure to meet the limit for one or more permit parameter | MODERATE | YES |
| 02/28/2011 | ACTIVE | 2D TWC Chapter 26, SubChapter A 26.121(a) ; 30 TAC Chapter 305, SubChapter F 305.125(1) | Failure to meet the limit for one or more permit parameter | MODERATE | YES |
| 01/31/2011 | ACTIVE | 2D TWC Chapter 26, SubChapter A 26.121(a) ; 30 TAC Chapter 305, SubChapter F 305.125(1) | Failure to meet the limit for one or more permit parameter | MODERATE | YES |
| 01/31/2011 | RESOLVED | 30 TAC Chapter 305, SubChapter F 305.125(5) ; PERMIT TPDES Permit WQ0013910-001 | Failure to maintain and ensure even flow from clarifier number 2. | MINOR | NO |
| 01/31/2011 | RESOLVED | TWC Chapter 26 26.121 ; 2D TWC Chapter 26, SubChapter A 26.121 (a) ; 2D TWC Chapter 26, SubChapter A 26.121(a)(1) ; TWC Chapter 26 26.121(a)(2) ; 2D TWC Chapter 26, SubChapter A 26.121 (a)(3) ; 2D TWC Chapter 26, SubChapter A 26.121(b) ; 2D TWC Chapter 26, SubChapter A 26.121 (c) ; 2D TWC Chapter 26, SubChapter A 26.121(d) ; 2D TWC Chapter 26, SubChapter A 26.121 (e) ; 30 TAC Chapter 305, SubChapter F 305.125(4) ; 30 TAC Chapter 305, SubChapter F 305.125(5) ; PERMIT TPDES Permit WQ0013910-001 | Failure to prevent unauthorized discharges. | MODERATE | NO |
| 01/31/2011 | RESOLVED | 30 TAC Chapter 305, SubChapter F 305.125(1) ; PERMIT TPDES Permit WQ0013910-001 | Failure to adhere to permit requirements | MINOR | NO |

Exhibit A

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|------------|----------|---|--|----------|-----|
| | | | for chlorine residual. | | |
| 01/31/2011 | RESOLVED | 30 TAC Chapter 305, SubChapter F 305.125(1) ; PERMIT TPDES Permit WQ0013910-001 | Failure to submit non-compliance notifications. | MODERATE | NO |
| 01/31/2011 | RESOLVED | 30 TAC Chapter 305, SubChapter F 305.125(1) ; PERMIT TPDES Permit WQ0013910-001 | Failure to adhere to permit limits for TSS. | MODERATE | NO |
| 01/31/2011 | RESOLVED | 30 TAC Chapter 305, SubChapter F 305.125(1) ; PERMIT TPDES Permit WQ0013910-001 | Failure to adhere to permit allowances for flow. | MINOR | NO |
| 08/31/2010 | ACTIVE | 2D TWC Chapter 26, SubChapter A 26.121(a) ; 30 TAC Chapter 305, SubChapter F 305.125(1) | Failure to meet the limit for one or more permit parameter | MODERATE | YES |
| 01/31/2010 | ACTIVE | 2D TWC Chapter 26, SubChapter A 26.121(a) ; 30 TAC Chapter 305, SubChapter F 305.125(1) | Failure to meet the limit for one or more permit parameter | MODERATE | YES |
| 07/31/2008 | ACTIVE | 2D TWC Chapter 26, SubChapter A 26.121(a) ; 30 TAC Chapter 305, SubChapter F 305.125(1) | Failure to meet the limit for one or more permit parameter | MODERATE | YES |
| 03/31/2008 | ACTIVE | 2D TWC Chapter 26, SubChapter A 26.121(a) ; 30 TAC Chapter 305, SubChapter F 305.125(1) | Failure to meet the limit for one or more permit parameter | MODERATE | YES |
| 02/29/2008 | ACTIVE | 2D TWC Chapter 26, SubChapter A 26.121(a) ; 30 TAC Chapter 305, SubChapter F 305.125(1) | Failure to meet the limit for one or more permit parameter | MODERATE | YES |
| 03/25/2008 | RESOLVED | TWC Chapter 26 26.121 ; 2D TWC Chapter 26, SubChapter A 26.121(a) ; 2D TWC Chapter 26, SubChapter A 26.121(a)(1) ; TWC Chapter 26 26.121(a)(2) ; 2D TWC Chapter 26, SubChapter A 26.121(a)(3) ; 2D TWC Chapter 26, SubChapter A 26.121(b) ; 2D TWC Chapter 26, SubChapter A 26.121(c) ; 2D TWC Chapter 26, SubChapter A 26.121(d) ; 2D TWC Chapter 26, SubChapter A 26.121(e) ; 30 TAC Chapter 305, SubChapter F 305.125(4) ; 30 TAC Chapter 305, SubChapter F 305.125(5) | Failure to prevent any discharge which has reasonable likelihood of adversely affecting human health or the environment. | MODERATE | NO |
| 03/25/2008 | RESOLVED | 30 TAC Chapter 305, SubChapter F 305.125(1) | Failure to comply with the maximum total chlorine residual of | MINOR | NO |

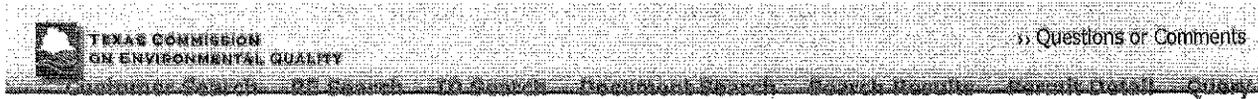
| | | | | | |
|------------|----------|--|---|----------|-----|
| | | | 4.0 mg/L. A grab sample collected during the investigation indicated a total chlorine residual greater than 5.0 mg/L. | | |
| 10/31/2007 | ACTIVE | 2D TWC Chapter 26, SubChapter A 26.121(a) ; 30 TAC Chapter 305, SubChapter F 305.125(1) | Failure to meet the limit for one or more permit parameter | MODERATE | YES |
| 12/31/2005 | ACTIVE | TWC Chapter 26 26.121(a) ; 30 TAC Chapter 305, SubChapter F 305.125(1) | Failure to meet the limit for one or more permit parameter | MODERATE | YES |
| 11/30/2005 | ACTIVE | TWC Chapter 26 26.121(a) ; 30 TAC Chapter 305, SubChapter F 305.125(1) | Failure to meet the limit for one or more permit parameter | MODERATE | YES |
| 12/09/2005 | RESOLVED | 30 TAC Chapter 305, SubChapter F 305.125(1) | Failure to conduct flow proportional composite sampling as required by the final effluent limits of permit. | MODERATE | NO |
| 12/09/2005 | RESOLVED | TWC Chapter 26 26.121 ; TWC Chapter 26 26.121(a) ; TWC Chapter 26 26.121(a)(1) ; TWC Chapter 26 26.121(a)(2) ; TWC Chapter 26 26.121(a)(3) ; TWC Chapter 26 26.121(b) ; TWC Chapter 26 26.121(c) ; TWC Chapter 26 26.121(d) ; TWC Chapter 26 26.121(e) ; 30 TAC Chapter 305, SubChapter F 305.125(4) ; 30 TAC Chapter 305, SubChapter F 305.125(5) | Failure to retain all untreated wastewater within the treatment units at the WWTF. The screening roll-off container was discharging untreated wastewater onto the ground. | MINOR | NO |
| 12/09/2005 | RESOLVED | 30 TAC Chapter 305, SubChapter F 305.125(1) | The total chlorine residual was < 1.0 mg/L. | MINOR | NO |

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Last Modified 7/26/2010

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Central Registry

Detail of: **Wastewater Permit WQ0013910001**

For: **KAUFMAN COUNTY FWSD 1A WWTP (RN102334638)**

900 CONCORD ST, FORNEY

Permit Status: **ACTIVE**

Held by: **KAUFMAN COUNTY FWSD 1A (CN602617755)**

OWNER Since 07/07/2004 View Compliance History

Mailing Address: Not on file

Effective Enforcement Orders Current TCEQ Rules

| Type | Effective Date | Docket Number | Citation/Requirement Provision | Violation Allegation | Classification |
|----------------------|----------------|-----------------|---|--|----------------|
| COMPLIANCE AGREEMENT | 12/31/2009 | | 2D TWC Chapter 26, SubChapter A 26.121(a)(1) (Not applicable to CH) | Failure to prevent any discharge which has reasonable likelihood of adversely affecting human health or the environment. | MODERATE |
| ADMINISTRATIVE ORDER | 10/19/2006 | 2005-1116-MWD-E | 2D TWC Chapter 26, SubChapter A 26.121(a) ; 30 TAC Chapter 305, SubChapter F 305.125(1) ; PERMIT Interim Effluent Limts & Mon Rq No. 1 (Not applicable to CH) | central office staff documented the failure to comply with the permitted effluent limits for TSS and NH3-N during the months of October 2004 through April 2005 as detailed in Effluent Chart A, and with CBOD5 and dissolved oxygen during October 2004 through April 2005 as detailed in Effluent Chart B. | MODERATE |
| ADMINISTRATIVE ORDER | 10/19/2006 | 2005-1116-MWD-E | 2D TWC Chapter 26, SubChapter A 26.121 ; 30 TAC Chapter 305, SubChapter F 305.125(1) ; PERMIT Interim Effluent Limits & Mon Rq No. 1 (Not applicable to CH) | grab sample of the effluent dominated receiving stream approx 500 yards DS of the Facility, indicated a fecal coliform level greater than 200,000 colony forming units per 100 milliliters. In addition, failed to comply with the permitted effluent limits during the month of May 2005. | MAJOR |

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Last Modified 7/26/2010

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Exhibit B

CRAWFORD & JORDAN LLP
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September 15, 2010

Mr. Mark Oliver
Enforcement Division
Compliance Monitoring Team (MC 149A)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

Re: Kaufman County Fresh Water Supply District No. 1-A;
Agreed Order relative to Docket No. 2005-1116-MWD-E

Dear Mr. Oliver:

As you know, this firm serves as General Counsel to Kaufman County Fresh Water Supply District No. 1-A (the "District"). As a follow-up to our recent telephone conversations, this letter serves as a formal request for a 48-month extension relative to compliance by the District with the wastewater diversion requirement set forth in Ordering Provision 3(c) of the referenced Agreed Order (the "Agreed Order").

I am attaching as Exhibit A hereto a letter, dated February 3, 2010, from Severn Trent Services, the District's operator, to Ms. Cara Windle of the Commission's Order Compliance Team, explaining the reasons for delay in and requesting an extension of time allowed for such compliance. The economic conditions described in the attached letter remain essentially unchanged; and accordingly, the District's wastewater capacity requirements remain essentially unchanged.

According to monthly operational reports produced by Severn Trent Services, the District's wastewater treatment plant (the "Treatment Plant") has operated at an average of approximately 40 percent capacity (measured as a ratio of actual-to-permitted flows) over the last three reported monthly periods. This measurement includes temporary wastewater service being provided to North Forney High School; if flows attributable to the school are not included, the Treatment Plant is operating at well below 40 percent capacity.

As the attached letter indicates, the District currently intends to begin design and construction of necessary diversion facilities at such time as additional treatment capacity is required. However, based on the most recent projections regarding anticipated residential development within the District's wastewater service area (the "Service

Exhibit C

Area”), which includes the District and three other water districts comprising the Windmill Farms development, the District’s engineer has estimated that it will be at least four years before actual flows reach 90 percent of permitted flows at the Treatment Plant. As an illustration of delayed development, the District expects that only ten homes likely will be constructed within the entire Service Area during this calendar year.

The City of Forney (the “City”) has recently indicated that the District’s total share of construction costs for improvements and new facilities necessary to divert wastewater flows from the Treatment Plant to regional facilities operated by North Texas Municipal Water District will exceed \$5 million. As we have discussed, although the current Wastewater Service Contract between the District and the City contemplates that the District will contribute its share of such capital costs, and related financing costs, through a debt service component of wastewater service charges, City representatives have recently indicated that the City will require the District to pay the District’s share of applicable design and construction costs prior to each phase of construction of improvements and new facilities.

The construction costs related to City facilities are in addition to the substantial costs of construction of a sewer line and related lifting and pumping facilities (the “Transport Facilities”) necessary to collect and transport wastewater from the Service Area to the City’s lift station. The District’s engineer has estimated that such facilities would cost approximately \$2.5 million to construct. The District will also incur significant costs in acquiring the property interests necessary for the construction of such transport facilities.

As we have discussed, it does not appear to be cost-effective or even financially feasible for the District to advance such sums for its share of construction of City facilities that will be sized with capacity to accommodate the ultimate development of the Service Area – which development certainly will not be achieved anytime in the near future. For reference, the Treatment Plant currently services approximately 1,500 active connections; and plans for ultimate development within the Service Area indicate over 9,000 connections.

The water districts participating in operation of the Treatment Plant do not have the funds necessary to design and construct the Transport Facilities, and they certainly do not have the funds necessary to meet the City’s capital contribution requirements outlined above. In addition, the two water districts within the Service Area that now serve residents, Kaufman County Fresh Water Supply District Nos. 1-B and 1-C, do not have adequate taxable values to support any economically feasible issuance of debt for these purposes; and because taxable values within these districts have fallen the last two years, the issuance of such debt will not be a real option for some time. Given current economic conditions, including the lack of residential development within the Service Area, it is not surprising that the primary developer of Windmill Farms has indicated that it is unable to advance (on behalf of the District) the \$8-9 million that would be required to design and

Mr. Mark Oliver
September 15, 2010
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construct the facilities, and acquire requisite interests in land, necessary to achieve the regionalization contemplated by the Agreed Order.

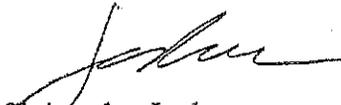
Taking into consideration current economic conditions, along with the fact that the Treatment Plant is currently operating at only 40 percent of capacity, the District has no need for additional capacity beyond the 600,000 gallons per day currently permitted for the Treatment Plant. The diversion/regionalization requirements set forth in the Agreed Order were based upon a set of assumptions made by the previous developer of Windmill Farms regarding future development and capacity needs, and these assumptions obviously have proved to be terribly incorrect.

It is important to note that the Treatment Plant is currently operating within its permit parameters, and it meets regulatory requirements and does not demonstrate in any way a threat to water quality.

In light on the above, the District respectfully requests that the Commission grant a 48-month extension relative to compliance by the District with the wastewater diversion requirement set forth in Ordering Provision 3(c) of the referenced Agreed Order.

Please contact me should you have any questions or require additional information.

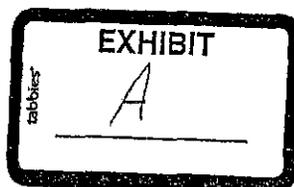
Very truly yours,



Christopher Jordan
Attorney for the District

cc: Board of Directors,
Kaufman County Fresh Water Supply District No. 1-A
Mr. Scott Young, P.E. – USA Professional Services Group, Inc.
Mr. Bill Fry – Severn Trent Services
Mr. Clay Crawford (Firm)

Enclosure



3 February 2010

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Dear Ms Windie:

This letter is in reply to your e-mail of 26 January 2010, in reference to the Agreed Order for Kaufman County Fresh Water Supply District No. 1-A ("KCFWSD 1-A"), Docket No. 2005-1116-MWD-E. The sole outstanding Ordering Provision appears to be Item 3.c, which requires that within 42 months of the effective date of the Agreed Order, all wastewater discharges from the KCFWSD 1-A sewer treatment plant (the "STP") be diverted to the City of Forney wastewater collection system, thence to the North Texas Municipal Water District's South Mesquite Sewage Treatment Facility ("South Mesquite Facility") as part of Kaufman's regionalization project.

At the present time, no pipeline to convey the wastewater to the Forney system has been constructed, although KCFWSD 1-A and the City of Forney are discussing the matter. However, in the interim the existing wastewater treatment plant at KCFWSD 1-A provides adequate treatment as shown by the fact that since July 2008 the plant has demonstrated a perfect compliance record. Prior to that time there were some difficulties that resulted in the following effluent excursions:

October 2007: Chlorine maximum of 8.6 mg/l
February 2008: TSS daily average of 16.9 mg/l
March 2008: TSS daily average of 16.6 mg/l
July 2008: TSS daily average of 22 mg/l.

These issues have been corrected, and to document this fact we have attached copies of the relevant Discharge Monitoring Reports (DMR's).

The current capacity of the STP is 600,000 gpd, which is sufficient to serve all connections currently using the treatment system, as well as additional connections. As you are aware, economic and market conditions have changed dramatically since the date of the Agreed Order, and such conditions have resulted in an extraordinary reduction in the pace of suburban and exurban residential lot development and home building in North Texas. Over the past year, development within the STP service area essentially has come to a halt. In light of such conditions, the current capacity of the STP should be sufficient to serve the collection system for several years. The lack of growth within the area has obviated any need for additional capacity for the time being.

In addition, due to these current economic conditions, none of the districts that utilize the STP is in a position to fund construction of any conveyance facilities. Raw land within these districts has been sold to a new developer since the date of the Agreed Order, and the new developer would be in a position to fund



the necessary conveyance facilities only upon an improvement of market conditions - which should, of course, coincide with the need for additional capacity.

KCFWSD 1-A has been advised that there are three sets of sanitary sewer improvements that will need to be constructed in order to convey raw sewage from the KCFWSD 1-A service area through Forney to the South Mesquite Facility. KCFWSD 1-A would need to construct a line and lift station south for connection to a multi-participant line that would in turn connect to facilities to be constructed by Forney, which include an additional lift station and the ultimate line to the South Mesquite Facility. KCFWSD 1-A has been advised that the Forney lift station and ultimate line are expected to be complete sometime in 2012. In other words, even if KCFWSD 1-A would have constructed its lift station and sewer line south, there would be no means of ultimate connection to the South Mesquite Facility. Again, the current lack of residential development in the region likely has diminished any need on Forney's part for additional sewer treatment capacity at this time.

KCFWSD 1-A intends to begin design and construction of the necessary conveyance facilities to divert to the Forney collection system in time to meet any demand for additional treatment capacity and would expect that the improved market conditions causing such demand would also allow the funding of this project. As such, KCFWSD 1-A respectfully requests an extension of time allowed for compliance with the wastewater diversion requirement set forth in item 3.c of the Agreed Order.

We believe that these actions will suffice in lieu of the diversion of the wastewater from KCFWSD 1-A to the South Mesquite Sewage Treatment Facility, and will thus comply with Ordering Provision 3.c. To document this fact we have attached the required certification statement.

Sincerely,

A handwritten signature in cursive script that reads "Bill Fry".

Bill Fry
Senior Manager

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