

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*

April 15, 2011

TO: Persons on the attached mailing list.

RE: Kaufman County Fresh Water Supply District No. 1A  
TPDES Permit No. WQ0013910001

**Decision of the Executive Director.**

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

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Forney City Hall, 101 East Main Street, Forney, Texas.

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

**How To Request a Contested Case Hearing.**

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

The request must include the following:

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

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

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

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

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

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

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

## **Deadline for Submitting Requests.**

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

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

## **Processing of Requests.**

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

## **How to Obtain Additional Information.**

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

Sincerely,



LaDonna Castañuela  
Chief Clerk

LDC/er

Enclosure

MAILING LIST  
for  
Kaufman County Fresh Water Supply District No. 1A  
TPDES Permit No. WQ0013910001

FOR THE APPLICANT:

Kaufman County Fresh Water Supply  
District No. 1A  
3100 McKinnon Street, Suite 950  
Dallas, Texas 75201-7011

Stephanie Landsman  
Source Environmental Sciences, Inc.  
4100 Westheimer Road, Suite 106  
Houston, Texas 77027

PROTESTANTS/INTERESTED  
PERSONS:

Brad B. Castleberry  
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Austin, Texas 78701-2442

Emily W. Rogers  
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FOR THE EXECUTIVE DIRECTOR  
via electronic mail:

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Texas Commission on Environmental  
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FOR OFFICE OF PUBLIC ASSISTANCE  
via electronic mail:

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

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

FOR THE CHIEF CLERK  
via electronic mail:

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

2011 APR 13 PM 2:10

TDES PERMIT NO. WQ0013910001

CHIEF CLERKS OFFICE

<b>APPLICATION BY</b>	§	<b>BEFORE THE</b>
	§	
<b>KAUFMAN COUNTY FRESH</b>	§	<b>TEXAS COMMISSION ON</b>
	§	
<b>WATER SUPPLY DISTRICT</b>	§	<b>ENVIRONMENTAL QUALITY</b>
	§	
<b>NO. 1A</b>	§	

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**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

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The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on Kaufman County Fresh Water Supply District No. 1A (Applicant) application and ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters from Brad B. Castleberry on behalf of the City of Terrell and Emily W. Rogers on behalf of the City of Forney. Brad B. Castleberry withdrew all comments and the hearing request filed on behalf of the City of Terrell. This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

**BACKGROUND**

***A. Description of Facility***

The Applicant has applied to the TCEQ for renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ 0013910001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000

gallons per day in Outfall 001 and a daily average flow not to exceed 350,000 gallons per day in Outfall 002. The application also includes a request to remove Outfall 002. The draft permit would authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day in Outfall 001. The existing wastewater treatment facility serves the Applicant's service area.

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. The facility is located approximately 600 feet north of U.S. Highway 80, approximately two miles east of the City of Forney in Kaufman County, Texas 75126.

### ***B. Procedural Background***

The permit application for a permit renewal was received on April 8, 2010 and declared administratively complete on May 7, 2010. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published on May 13, 2010 in *Forney Messenger*. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published on November 18, 2010 in *Forney Messenger*. The public comment period ended on December 20, 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, 76th Legislature, 1999.

### ***C. Access to Rules, Laws, and Records***

Please consult the following websites to access the rules and regulations applicable to this permit:

- to access the Secretary of State website: [www.sos.state.tx.us](http://www.sos.state.tx.us);
- for TCEQ rules in Title 30 of the Texas Administrative Code: [www.sos.state.tx.us/tac/](http://www.sos.state.tx.us/tac/) (select “TAC Viewer” on the right, then “Title 30 Environmental Quality”);
- for Texas statutes: [www.capitol.state.tx.us/statutes/statutes.html](http://www.capitol.state.tx.us/statutes/statutes.html);
- to access the TCEQ website: [www.tceq.state.tx.us](http://www.tceq.state.tx.us) (for downloadable rules in WordPerfect or Adobe PDF formats, select “Rules, Policy, & Legislation,” then “Rules and Rulemaking,” then “Download TCEQ Rules”);
- for Federal rules in Title 40 of the Code of Federal Regulations: [www.epa.gov/epahome/cfr40.htm](http://www.epa.gov/epahome/cfr40.htm); and
- for Federal environmental laws: [www.epa.gov/epahome/laws.htm](http://www.epa.gov/epahome/laws.htm).

Commission records for this facility are available for viewing and copying and are located at TCEQ’s main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk). The permit application, ED’s preliminary decision, and draft permit are available for viewing and copying at Forney City Hall, 101 East Main Street, Forney, Texas.

## **COMMENTS AND RESPONSES**

### **COMMENT 1:**

Mr. Castleberry contends that the facility continues to exceed permitted effluent limits and by virtue of an Agreed Order, TCEQ Docket No. 2005-1116-MWD-E (Agreed Order), it should not be granted a renewal. He cites exceedances of the limits for total residual chlorine, total suspended solids and flow, overflows, and Ordering Provisions 3a, 3b and 3c of the aforementioned administrative order as the basis for this recommendation. Ordering Provisions 3a, 3b and 3c are as follows:

- a. Within 60 days after the effective date of this Agreed Order, Kaufman shall achieve compliance with the permitted effluent limitations contained in TPDES Permit No. 13910001;
- b. Within 75 days after the effective date of this Agreed order, [Applicant shall] submit written certification as described below to demonstrate compliance with Ordering Provision No. 3.a.; and
- c. Within 42 months after the effective date of this Agreed Order, [Applicant shall] submit written certification as described below that all wastewater discharges from the Facility have been diverted to the City of Forney's wastewater collection system thence to North Texas Municipal Water District's South Mesquite Sewage Treatment Facility as part of Kaufman's regionalization project.

Ms. Rogers and Mr. Castleberry point out that as a result of citations between 2003 and 2005 for overflows, illegal discharges, a discharge route that did not conform to the Facility's permit and discharge that violates effluent limits, TCEQ approved the Agreed Order. Ms. Rogers is requesting a contested case hearing because she alleges that even after issuance of the Agreed Order, the Applicant failed to complete regionalization, i.e., Ordering Provision 3c, and had been cited for unauthorized discharges, flow exceedances and effluent violations. Ms. Rogers alleges that the City of Forney will be harmed if the permit is issued with no requirement to regionalize because the City will be unable to plan when and how the interconnection will be accomplished, as it has a legal right to interconnection under a service contract it entered into pursuant to the Agreed Order. Ms. Rogers finally states that TCEQ should require the Applicant to regionalize, pursuant to the Agreed Order.

**RESPONSE 1:**

The agreed order acknowledges that the Applicant contracted for the construction of a new 0.60 million gallons per day (MGD) wastewater treatment facility, which was completed in September 2005.

Violations of permitted effluent limits as documented by the TCEQ review of self-reported effluent data and included in the compliance history report for the facility are not indicative of a trend toward deteriorating effluent quality. To the contrary, the effluent quality has improved and the improving trend is expected to continue. The trend of the self-reported data for water quality parameters five-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), total suspended solids (TSS) and ammonia-nitrogen (NH<sub>3</sub>-N), from April 2005 through November 2010, reflects improving effluent quality. Only 4 out of 67 reported values of residual chlorine analytical measurements were above the maximum permitted value of 4.0 mg/l and none was below the minimum permitted value of 1.0 mg/l during the same period. Since the permit was issued in October 2006 through November 2010, only one out of 49 effluent flow measurements was above the permitted daily average flow not to exceed 600,000 gallons per day. Current information in the TCEQ Central Registry shows violations related to unauthorized discharges have been resolved. The Applicant is complying with the discharge route stated in the current permit. Commenting on the agreed order and notices of violations noted in the compliance history report, the TCEQ Region 4 indicated that the facility is operating very well and mentioned that the Applicant joined the Sanitary Sewer Overflow Initiative Outreach Program in 2008.

According to the TCEQ Consolidated Compliance and Enforcement Data System (CCEDS), compliance with Ordering Provisions (technical requirements) 3a and 3b of the aforementioned administrative order has been completed. In a letter dated October 6, 2010, the TCEQ Enforcement Division granted an amended schedule for compliance

with Ordering Provision 3c. The new deadline given for compliance with this provision is September 15, 2014.

**COMMENT 2:**

Ms. Rogers is concerned that part of the Applicant's service area is inside the City of Forney's extra-territorial jurisdiction, and complains that the effluent limits are not sufficiently stringent to meet water quality standards, that they will cause degradation of water quality and that they are not protective of existing uses of Big Brushy Creek, Kings Creek and Cedar Creek Reservoir. Mr. Castleberry also expressed concern about water quality impacts, and he expressed concern about the protection of the public interests of the citizens of the City of Terrell.

**RESPONSE 2:**

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 ED must determine the uses of the receiving waters and set effluent limits that are protective of those uses. In this case, the unclassified receiving waters 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.

The TCEQ's Water Quality Assessment Team evaluated the discharge from Outfall 001 using a default QUAL-TX model for an effluent flow of 0.60 MGD. Based on modeling results, an effluent set of 7 mg/L CBOD<sub>5</sub>, 2 mg/L NH<sub>3</sub>-N, and 6 mg/L DO is predicted to be necessary to ensure that dissolved oxygen levels will be maintained above the criteria for the unnamed tributary (3.0 mg/L) and Big Brushy Creek (5.0 mg/L). This effluent set is more stringent than the current effluent set in the permit.

Moreover, in accordance with the recent amendments to 30 TAC Chapters 309 and 319, bacteria (*E. coli*) effluent limitations and monitoring requirements are provided in the draft permit in addition to effluent limitation and monitoring requirements for residual chlorine for monitoring the efficacy and controlling the efficiency of disinfection.

Modeling results also indicate that this discharge is not expected to have a significant impact on dissolved oxygen levels in Kings Creek or Cedar Creek Reservoir, due to their distance downstream. Thus, the recommended effluent limits are predicted to be adequate to ensure that dissolved oxygen levels will be maintained above the criteria for those water bodies as well.

**COMMENT 3:**

Ms. Rogers is concerned that the proposed discharge is not consistent with the Total Maximum Daily Load (TMDL) for Segment No. 0818 of the Trinity River Basin.

**RESPONSE 3:**

The TCEQ Summary Table of Completed TMDLs and Implementation Plans does not list a TMDL for Segment No. 0818. Nor is the segment listed in the TMDL Projects in the Trinity River Basin.

**COMMENT 4:**

Ms. Rogers believes that, considering the compliance history of the Applicant, the draft permit is not sufficiently stringent in terms of monitoring and reporting to ensure that the Applicant will comply with the permit requirements and conditions. She also suggests adding permitting requirements or conditions to protect against and mitigate the effects of any unauthorized discharges and upsets at the plant.

#### **RESPONSE 4:**

As noted in Response 1, the trend of the self-reported effluent data for water quality parameters five-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), total suspended solids (TSS) and ammonia-nitrogen (NH<sub>3</sub>-N), from April 2005 through November 2010, is improving.

The draft permit contains adequate provisions to ensure compliance with the permit requirements and conditions. The draft permit contains two provisions for ensuring adequate disinfection: bacteria and residual chlorine effluent limitations and monitoring requirements. Further, in addition to the standard effluent limitations and monitoring and reporting requirements provided in the draft permit, the draft permit requires daily inspection of the facility by a certified operator, and maintenance at the plant site of records of these inspections Other Requirement No. 3 in the draft permit provides that:

A certified operator shall inspect the facility daily and maintain at the plant site a record of these inspections. These records shall be available at the plant site for inspection by authorized representatives of the commission for at least three years.

During this daily inspection the proper operation and maintenance of wastewater treatment facilities shall be checked, specifically for compliance with permitted effluent limitations for total suspended solids (TSS), five-day carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), and ammonia-nitrogen (NH<sub>3</sub>-N).

In addition, the Standard Permit Conditions section of the draft permit requires noncompliance notification, which shall include, among other things, steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance and to mitigate its adverse effects. The same section requires the Applicant to take all reasonable steps to minimize or prevent any discharge, sludge use or disposal, or other permit violation that has a reasonable likelihood of adversely affecting human health or

the environment. It also prohibits unauthorized discharge of wastewater or any other waste, and requires the provision of adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures. The draft permit also contains pretreatment requirements for a facility classified as a publicly owned treatment works (POTW).

**COMMENT 5:**

Mr. Castleberry expressed concern regarding nuisance and odor conditions at the facility.

**RESPONSE 5:**

TCEQ rules require domestic wastewater treatment facilities to meet buffer zone requirements for the abatement and control of nuisance odors according to 30 TAC § 309.13(e). These rules provide three options for applicants to use to satisfy the nuisance odor abatement and control requirement. The Applicant can meet this requirement by owning the buffer zone area, by obtaining a restrictive easement from the adjacent property owner(s) for any part of the buffer zone not owned by the Applicant, or by providing a nuisance odor prevention plan request for approval by the ED. The Applicant meets the buffer zone requirements by ownership of the buffer zone areas.

**COMMENT 6:**

Mr. Castleberry expressed concern about the need for the facility and the ability and access to regional wastewater treatment opportunities.

## **RESPONSE 6:**

The Agreed Order, effective October 4 2006, required the Applicant to connect to the City of Forney's wastewater collection system within 42 months. Under the terms of the Agreed Order, the ED has the authority to grant an extension of any deadline contained in the order upon a written and substantiated showing of good cause. The Applicant submitted two written requests for an extension, the most recent for a 48 month extension of the deadline that required it to connect to the City of Forney's wastewater collection system. The Applicant represents in the request for extension that at the present, there is no pipeline to convey the wastewater; development in the area has slowed considerably due to recent economic conditions, eliminating the need for additional capacity; the Applicant intends to begin design and construction of the necessary conveyance facilities when market conditions improve thereby creating the demand and funding for the project; and the facility continues to serve existing residents in the area. Based on these and other information provided in the Applicant's requests, on October 6, 2010, the ED granted the extension request giving the Applicant until September 15, 2014 to comply with the terms of the Agreed Order, with a progress report due January 1, 2011 and annually thereafter. The Applicant must notify TCEQ if it completes regionalization, or if there is a significant change in the conditions affecting the regionalization process or the operation of the existing wastewater treatment facility.

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

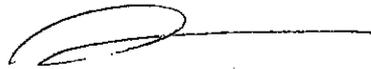
No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.  
Executive Director

Robert Martinez, Director  
Environmental Law Division



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REPRESENTING THE  
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