

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

July 25, 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

**Re: Executive Director's Response to Hearing Requests and Requests for
Reconsideration
TCEQ Docket No 2011-0794-IWD
Aspen Power L.L.C.**

Dear Ms. Chao

Enclosed for filing is the original and (7) copies of the Executive Director's Response to Hearing Requests and Requests for Reconsideration regarding: Aspen Power L.L.C.

If you have any questions, please contact me at (512) 239-3668.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dan Ingersoll".

Dan Ingersoll
Staff Attorney
Environmental Law Division, MC 173

Cc: service list

DOCKET NO. 2011-0794-IWD

APPLICATION BY	§	BEFORE THE
ASPEN POWER L.L.C.	§	TEXAS COMMISSION
FOR PROPOSED	§	ON
PERMIT NO. WQ0004921000	§	ENVIRONMENTAL QUALITY

Executive Director's Response to Hearing Request and Request for Reconsideration

I. Introduction

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests and Requests for Reconsideration (Response) on the application by Aspen Power L.L.C., Lufkin Generating Facility Plant (Aspen or the Applicant), for a new TPDES Permit No. WQ0004291000 that would authorize the Applicant to discharge cooling tower blowdown commingled with low volume wastewater at a daily average flow not exceed 214,000 gallons per day (GPD) via Outfall 001. The Office of the Chief Clerk received one timely hearing request from Suzbrekensal investments, Ltd. (SI). One Request for Reconsideration from the City of Lufkin was filed late. The Executive Director recommends that the hearing request be granted.

Attached for Commission consideration are the following:

- Attachment A – GIS Map
- Attachment B – Affected Landowner's Map & Affected Landowner's List
- Attachment C – Compliance History
- Attachment D – Statement of Basis/Technical Summary (Fact Sheet),
Executive Director's Preliminary Decision, and Draft Permit
- Attachment E – Executive Director's Response to Public Comment

Copies of the documents are being provided to all parties. The Office of the Chief Clerk previously mailed the RTC to all persons on the mailing list. The Executive Director also corrects the value of permitted flow in this Response from the value expressed in the April 18, 2011 Response to Public Comments: from 214,560 GPD to 214,000 GPD. This change reflects the difference between the amount of flow requested by the Applicant and the actual flow recommended by the Executive Director in the Draft Permit.

II. Facility Description

Aspen has applied for a permit to authorize the discharge of cooling tower blowdown commingled with low volume wastewater at a daily average flow not to exceed 214,000 GPD at a new biomass-fired steam electric power generation facility, the Aspen Power Lufkin Generating Plant. The facility will generate wastewater from cooling tower blowdown, boiler blowdown, de-ionization regeneration water, filtration backwash, reverse osmosis regeneration wastewater, domestic raw water, and storm water. Treated water for domestic use will be purchased from the City of Lufkin and raw water for process use will be produced from a deep well owned by Aspen Power, identified as Texas Water Development Board Well #3743102. Boiler and cooling tower feed water will be produced from a deep well. Domestic wastewater will be discharged to the City of Lufkin publicly owned treatment works. Storm water will be discharged under the authority of the TPDES Multi-sector Industrial General Permit for Storm water (TXR050000).

The effluent will be discharged to an unnamed tributary; thence to Ellen Trout Lake; thence to Mill Creek; thence to Paper Mill Creek; thence to Angelina River/Sam Rayburn Reservoir, in Segment No. 0615 of the Neches River Basin. The unclassified receiving waters have no significant aquatic life use for the unnamed tributary and high aquatic life use for Ellen Trout Lake. The designated uses for Segment No. 0615 are contact recreation, intermediate aquatic life use and public water supply.

The plant site is located approximately 0.5 mile east of the intersection of State Highway 103 and Kurth Drive in the City of Lufkin, Angelina County, Texas.

III. Procedural Background

The Application was submitted on March 5, 2010, and declared administratively complete on April 20, 2010. The Notice of Receipt of Application and Intent to Obtain Permit was published on May 5, 2010 in the *Lufkin Daily News* and in Spanish in *La Lengua*. The ED completed the technical review of the Application on August 9, 2010, and prepared a draft permit. The Notice of Application and Preliminary Decision was published on October 31, 2010 in the *Lufkin Daily News*, and on November 3, 2010 in Spanish in *La Lengua*. The comment period for this application closed on December 3, 2010. The ED filed the Response to Comments with the Chief Clerk on April 18, 2011.

The Final Decision letter was mailed on April 20, 2011. The deadline for filing a Hearing Request or a Request for Reconsideration was May 20, 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 Evaluation Process for Hearing Requests

A. Rules on Responses to Requests

Under 30 TAC § 55.209(d), the Executive Director, the public interest counsel, and applicant may submit written responses to hearing requests.

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).

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:

- 1) 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;

- 2) 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;
- 3) request a contested case hearing;
- 4) 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 responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- 5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

C. Requirement that Requestor be an Affected Person

In order to grant a contested case hearing, the commission must determine that a requestor is 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 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.

D. Referral to the State Office of Administrative Hearings

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(b).

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 has 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 Requestor Complied With 30 TAC §§ 55.201(c) and (d).

SI submitted a hearing request that substantially complied with the requirements of 30 TAC §§ 55.201(c) & (d). The public comment period for this permit application ended on December 3, 2010. The period for timely filing a request for a contested case hearing on this permit application ended on May 20, 2011.

The Office of the Chief Clerk received two timely hearing request letters from SI; the first hearing request letter on December 1, 2010, and the second hearing request letter on May 16, 2011. The hearing requests provided: 1) the requestor’s names, address, daytime phone number, 2) requested a contested case hearing, 3) identified their personal justiciable interest as detailed below, and 4) listed relevant and material disputed issues of fact that were raised during the public comment period (i.e., concerns regarding the ownership of the discharge route, effluent temperature, dissolved solids, harmful chemicals, oil and grease, and the impact of the discharge on an impaired water body.).

The ED recommends the Commission find that the hearing request of SI substantially complies with the requirements of 30 TAC § 55.201(c) & (d).

2. Whether the Requestor Met the Requirements of an Affected Person under the Commission Rules.

SI effectively stated a personal, justiciable interest in the Application. In their request letter, SI indicated that it is immediately downstream of the proposed facility and that the discharge route crosses its property. Next, the hearing request raised issues regarding the right of the Applicant to use the discharge route, the impact of the discharge on an impaired water body, and various constituents in the effluent, such as heat, dissolved solids, harmful chemicals, and oil and grease. Except for the issue concerning the ownership of the discharge route, as discussed below, the law under which the Application is considered protects SI's interests in these issues. Furthermore, there is a potential connection between the activity and SI's interest. The close proximity of SI's property to the facility, in addition to the location of their property on the discharge route, increases the potential of the discharge to affect SI's property directly. Accordingly, SI has an interest in the effects of the proposed activity on their property that is not common to the general public.

The documents provided by the Executive Director in this Response support and confirm the content of SI's hearing request letter in regards to the physical location of their property. The Applicant's Affected Landowner Map and List includes SI. *See Attachment B.* Furthermore, the GIS Map developed by the Executive Director's staff indicates that SI's property is on the discharge route and located within one mile of the facility. *See Attachment A.*

The ED recommends the Commission find that SI is an affected person under the requirements of 30 TAC § 55.203.

3. Whether the Issues Raised are Referable to SOAH for a Contested Case Hearing

The following issues discussed by SI were raised during the public comment period and addressed in the RTC. *See Attachment E.* None of the issues were withdrawn. All identified issues in this response are considered disputed, unless otherwise noted.

Issue 1: Does Aspen have the legal right to use the man-made watercourse on SI's property as a discharge route?

The TCEQ does not grant the right to use land for a discharge route in its water quality permits. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does a water quality permit authorize any invasion of personal right 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 issue is not relevant or material to a decision on the issuance of the permit.

The Executive Director concludes that this issue is not appropriate for referral to SOAH.

Issue 2: Does the existence of a regional facility within three miles of the proposed facility violate Section 26.0282 of the Texas Water Code?

This issue is not appropriate for referral to SOAH because it is not relevant or material to an application for an industrial wastewater permit. Texas Water Code Section 26.0282 states the following in regards to regionalization:

In considering the issuance, amendment, or renewal of a permit to discharge waste, the commission may deny or alter the terms and conditions of the proposed permit, amendment, or renewal based on consideration of need, including the expected volume and quality of the influent and the availability of existing or proposed area wide or regional waste collection, treatment, and disposal systems not designated as such by commission order pursuant to provisions of this subchapter. This section is expressly directed to the control and treatment of conventional pollutants normally found in domestic wastewater.

Section 26.0282 clearly states that it is "expressly directed" to constituents in domestic wastewater. The regionalization issue is not a referable issue relevant and material to this case because Section 26.0282 does not apply to industrial facilities.

Furthermore, this issue is not appropriate for referral to SOAH because this issue was not raised during the public comment period. SI did not raise this issue until they submitted their second hearing request letter on May 16, 2011, which was well after the end of the comment period on December 3, 2010.

The Executive Director concludes that this issue is not appropriate for referral to SOAH.

Issue 3: Will the discharge effluent increase the temperature of the water, resulting in the formation of additional bacteria and other pathogens, harming people, aquatic life, and vegetation along the discharge path?

This issue was raised and addressed in the ED's Response to Public Comment, Comment 3. Although the Executive Director does not believe that the temperature limit in the permit is a concern because the limit is the segment ambient temperature of the receiving water (93 degrees), and Aspen is not discharging any oxygen demanding effluent (domestic wastewater), this is a fact issue that is relevant and material to a decision on the issuance of the permit.

The Executive Director concludes that this issue is appropriate for referral to SOAH.

Issue 4: Will the discharge contain solvents and other hazardous chemicals that will be harmful to people, aquatic life, and vegetation?

This issue was raised and addressed in the ED's Response to Public Comment, Comment 4. Although the only chemicals authorized for discharge are chromium and zinc, and are only authorized in very small amounts, this is a fact issue that is relevant and material to a decision on the issuance of the permit.

The Executive Director concludes that this issue is appropriate for referral to SOAH.

Issue 5: Will the discharged effluent contain too many dissolved solids resulting in excessive buildup within the receiving waters?

This issue was raised and addressed in the ED's Response to Public Comment, Comment 5. This is a fact issue that is relevant and material to a decision on the issuance of the permit.

The Executive Director concludes that this issue is appropriate for referral to SOAH.

Issue 6: Will the discharge of grease through SI's land be hazardous to human health and wild life?

This issue was raised and addressed in the ED's Response to Public Comment, Comment 5. This is a fact issue that is relevant and material to a decision on the issuance of the permit.

The Executive Director concludes that this issue is appropriate for referral to SOAH.

Issue 7: Should the permit be denied because Segment No. 615 in the Neches River Basin is on the 303(d) list of impaired water bodies?

The Section 303(d) list issue was raised and addressed in the ED's Response to Public Comment, Comment 6. This is a fact issue that is relevant and material to a decision on the issuance of the permit.

The Executive Director concludes that this issue is appropriate for referral to SOAH.

VI. Duration of the Contested Case Hearing

Should the Commission decide to refer this case to SOAH, the Executive Director recommends a nine-month duration for a contested case hearing from the date of the preliminary hearing to the presentation of a proposal for decision.

VII. Response to Request for Reconsideration

One requester, the City of Lufkin, submitted an untimely request for reconsideration. The deadline to receive requests for reconsideration ended on May 20, 2011. The City of Lufkin filed a request for reconsideration dated June 8, 2011, which the Office of the Chief Clerk received on June 13, 2011. Under the rules, a request for reconsideration (or

hearing request) must be filed with the Chief Clerk no more than 30 days after the Chief Clerk transmits the Executive Director's decision and response to comments. See 30 TAC § 55.201(a). The City of Lufkin failed to meet this deadline.

*The Executive Director respectfully recommends that the Commission **deny the requests for reconsideration** submitted by the City of Lufkin.*

VIII. Executive Director's Recommendation

The ED recommends that the Commission grant the hearing request of SI and that the Commission refer the following issue to SOAH for a contested case hearing with a duration of nine months:

- Issue 3: Will the discharge effluent increase the temperature of the water, resulting in the formation of additional bacteria and other pathogens, harming people, aquatic life, and vegetation along the discharge path?**
- Issue 4: Will the discharge contain solvents and other hazardous chemicals that will be harmful to people, aquatic life, and vegetation?**
- Issue 5: Will the discharged effluent contain too many dissolved solids resulting in excessive buildup within the receiving waters?**
- Issue 6: Will the discharge of grease through SI's land be hazardous to human health and wild life?**
- Issue 7: Should the permit be denied because Segment No. 615 in the Neches River Basin is on the 303(d) list of impaired water bodies?**

Respectfully submitted,

Texas Commission on Environmental
Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division



Daniel W. Ingersoll, Staff Attorney
Environmental Law Division
State Bar No. 24062794
P.O. Box 13087, MC 173
Austin, TX 78711-3087
512-239-3668



Robin Smith, Staff Attorney
Environmental Law Division
State Bar
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-3400
Fax: (512) 239-0606

REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on July 25, 2011, the original and seven copies of the "Executive Director's Response to Hearing Request and Request for Reconsideration" for Aspen Power L.L.C. TCEQ Permit No. WQ0004921000, were filed with the TCEQ's Office of the Chief Clerk and a complete copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.

Respectfully submitted,



Daniel Ingersoll
Environmental Staff Attorney

MAILING LIST
ASPEN POWER, L.L.C.
DOCKET NO. 2011-0794-IWD; PERMIT WQ0004921000

FOR THE APPLICANT:

Mark Knippa
Aspen Power, L.L.C
800 Bering Drive, Suite 250
Houston, Texas 77057
Tel: (713) 554-4477
Fax: (866) 651-5534

Danny Vines
Aspen Power, L.L.C
P.O. Box 151507
Lufkin, Texas 75915-1507
Tel: (936) 875-1507
Fax: (936) 875-5525

FOR THE EXECUTIVE DIRECTOR:

Via electronic mail

Robin Smith, Staff Attorney
Daniel Ingersoll, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division, MC 173
Austin, Texas 78711-3087
Tel: (512) 239-0600
Fax: (512) 239-0606

John O. Onyenobi, Technical Staff
Texas Commission on Environmental
Quality
Waste Permits Division, MC 148
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6707
Fax: (512) 239-4430

FOR PUBLIC INTEREST COUNSEL:

Via electronic mail:

Mr. Garrett Arthur., Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel, MC 103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

**FOR OFFICE OF PUBLIC
ASSISTANCE:**

Via electronic mail:

Ms. Bridget Bohac, Director
Texas Commission on Environmental
Quality
Office of Public Assistance, MC 108
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4000
Fax: (512) 239-4007

**FOR ALTERNATIVE DISPUTE
RESOLUTION:**

Via electronic email:

Mr. Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution, MC 222
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

REQUESTER(S):

Timothy J. Karczewski
Zeleskey Law Firm, PLLC
P.O. Box 1728
Lufkin, Texas 75902-1728

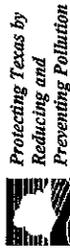
INTERESTED PERSON(S)

Keith N. Wright, Deputy City Manager
City of Lufkin
P.O. Box 190
Lufkin, Texas 75902-0190

Attachment A

Aspen Power

Map Requested by TCEQ Office of Legal Services



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

July 19, 2011

0 0.125 0.25 0.5 0.75 1 1.25 Miles



Projection: Texas Statewide Mapping System (TSMS)

Scale: 1:62,000

Legend

○ Requestor Address (Estimated)

□ Facility

⊕ Effluent Discharge (Outfall)

○ 1-Mile Radius Around Facility Property Boundary

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 street data are GDIT/TeleAtlas Data (1:100,000). The river segments are 2011 NHD. The background of this map is a one-half meter resolution aerial photograph mosaic from the 2010 Texas Orthoregistry Project.

This map depicts the following:
(1) The approximate location of the facility. This is labeled "Aspen Power, LLC, Lufkin Generating Facility"

(2) The approximate location of the hearing requestor. This is labeled "Suzbrekensa Investment, Ltd."

(3) The effluent discharge route. This is labeled along the river segment depicted in blue:

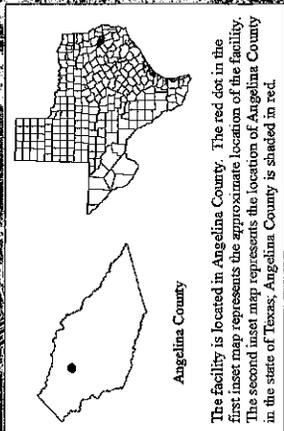
- a. Unnamed tributary
- b. Ellen Trout Lake
- c. Mill Creek
- d. Paper Mill Creek

e. Angelina River/Sam Rayburn Reservoir, in Segment No. 0615 of the Neches River Basin

(4) One-mile radius around the facility property boundary.

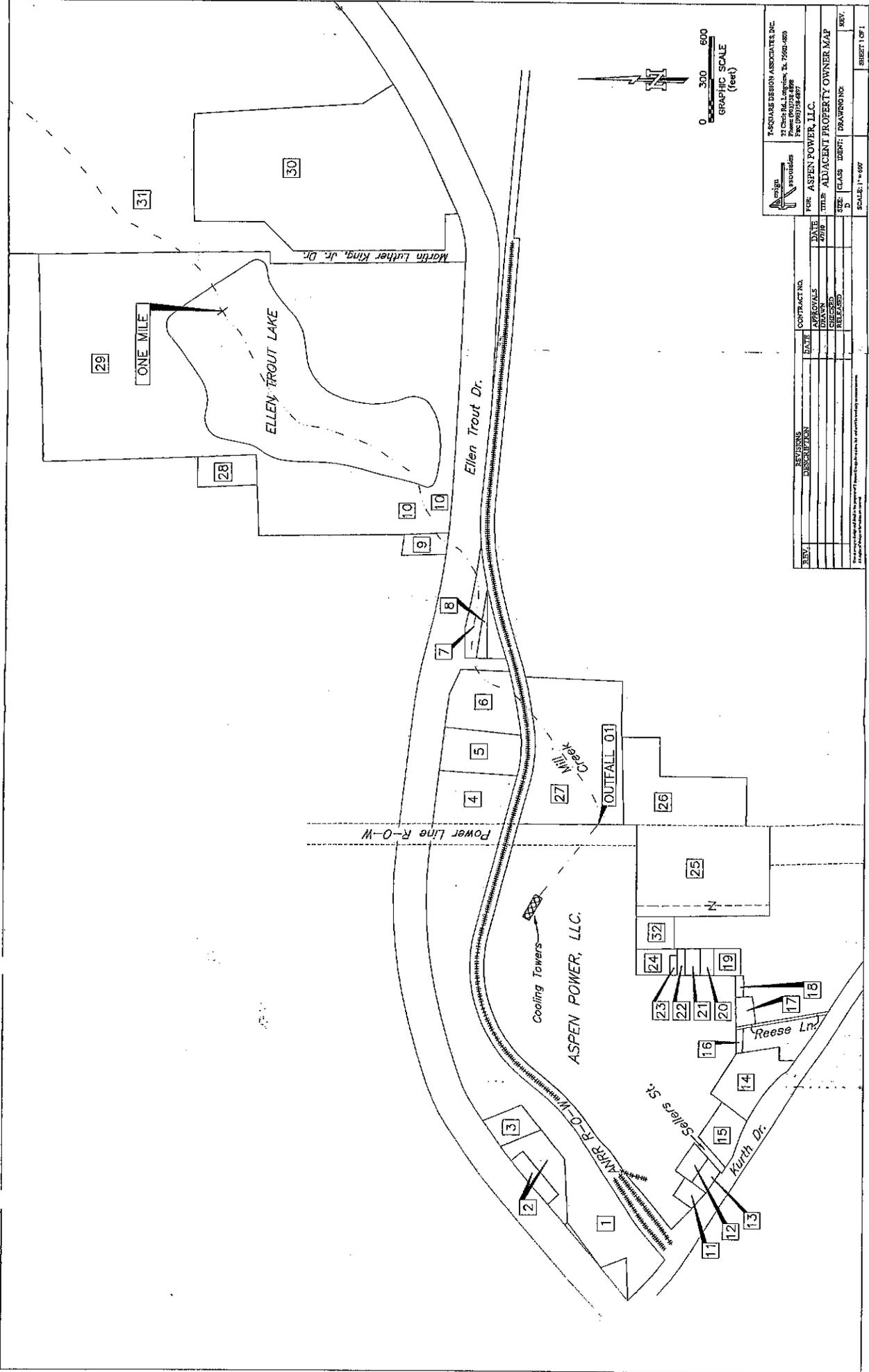
This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resources Division at (512) 239-0800.

PE Branch - CRF-353430



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

Attachment B



		TASCORAS DESIGN ASSOCIATES, INC. 2701 West Loop, Suite 100, Houston, TX 77027-0000 Tel: (713) 865-1000 Fax: (713) 865-1001	
FOR: ASPEN POWER, LLC.		DATE: 07/10	
TITLE: ADJACENT PROPERTY OWNER MAP		DRAWN BY:	
SIZE:		CHECKED BY:	
CLASS:		RELEASED:	
IDENT:		DRAWING NO:	
SCALE: 1" = 600'		SHEET 1 OF 1	

REV.	DESCRIPTION	DATE	CONTRACT NO.
1	ISSUES		
2	REVISIONS		

Aspen Power, LLC
List of Adjacent Property Owners:
Source of Data: Angelina County Appraisal District

1. Allen Loggins Jr
7617 Hwy 103E
Lufkin, TX 75901
2. Larry & Sandra Choate
PO Box 1324
Lufkin, TX 75902-1324
3. Allen & Margaret Loggins
PO Box 1562
Lufkin, TX 75902-1562
4. Walter W. Turner
781 Fairview Dr
Diboll, TX 75941-1113
5. J. Richard Thompson
309 Southern Trace Dr
Lufkin, TX 75901-8862

6. Suzbrekensal Investments, Ltd
3317 Stanford Ave
Dallas, TX 75225
7. Gerald Parker
2904 La Branch St
Houston, TX 77004-2717
8. Allen Loggins Jr
7617 Hwy 103E
Lufkin, TX 75901
9. Charlotte Moore
2102 Ellen Trout Dr.
Lufkin, TX 75904-1146
10. City of Lufkin
PO Box 190
Lufkin, TX 75902-0190

11. Mrs A B Cranford
2008 Kurth Dr
Lufkin, TX 75904

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APR 13 2010

Water Quality Division
Application Team

Aspen Power, LLC
List of Adjacent Property Owners:
Source of Data: Angelina County Appraisal District

12. Mozelle Howard
2006 Kurth Dr
Lufkin, TX 75904
13. Aspen Power
5138 Ted Trout Drive
Lufkin, TX 75915
14. AMERICAN ECHEM INC.
C/O Hylands Bernard
1912 Kurth
Lufkin, TX 75904
15. Allen & Margaret Loggins Etux
PO Box 1562
Lufkin, TX 75902
16. Allen & Margaret Loggins Etux
PO Box 1562
Lufkin, TX 75902

17. J C Gilder
22383 0049 Barela A, Tract 291, 1.0 acres
Owner believed deceased No Known Address
Per Kenneth Johnson,
Angelina County Tax Appraisal District
418 N. Second
Lufkin, TX 75901-3012
(936) 634-8456
18. Colquitt Ferguson
2809 Minnie Lou
Lufkin, TX 75904
19. Clementee Parker
RR 7 Box 430.
Lufkin, TX 75904-8532

20. Mary Starghill
PO Box 606
Groveton, TX 75845-0606

21. Londell Grant, Sr
6301 Ezzra Charles
Houston, TX 77091

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APR 13 2010
Water Quality Division
Application Team

Aspen Power, LLC
List of Adjacent Property Owners:
Source of Data: Angelina County Appraisal District

22. Londell Grant, Sr
6301 Ezzra Charles
Houston, TX 77091
23. Joe Nathan Bagley
103 Fairy St
Lufkin, TX 75904-1439
24. Sam Eaton
803 North Ave
Lufkin, TX 75904-2027
25. Henry McKenzie Estate
c/o Victoria McKenzie
2700 Minnie Lou
Lufkin, TX 75904
26. Lufkin Creekside Apartments
PO Box 153055
Lufkin, TX 75915-3055
27. Neighborhood Properties, LLC.
Attn: Local Initiatives
501 Seventh Ave. 7th Floor
New York, NY 10018
28. City of Lufkin
PO Box 190
Lufkin, TX 75902-0190
29. City of Lufkin
PO Box 190
Lufkin, TX 75902-0190
30. Angelina County Civic Center
PO Box 1728
Lufkin, TX 75902-1728
31. Angelina County Expo Center
PO Box 1728
Lufkin, TX 75902-1728
32. James Earle Cox
PO Box 8331
Pine Bluff, AR 71611-8311

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APR 13 2010

Water Quality Division
Application Team

Attachment C

Compliance History

Customer/Respondent/Owner-Operator:	CN603188699 Aspen Power, LLC	Classification: AVERAGE	Rating: 4.67
Regulated Entity:	RN105224877 ASPEN POWER ELECTRICAL LUFKI GENERATING PLANT	Classification: AVERAGE	Site Rating: 4.67
ID Number(s):	WASTEWATER WASTEWATER AIR OPERATING PERMITS AIR NEW SOURCE PERMITS STORMWATER AIR EMISSIONS INVENTORY	EPA ID PERMIT PERMIT REGISTRATION PERMIT EPA ID REGISTRATION ACCOUNT NUMBER AFS NUM PERMIT ACCOUNT NUMBER	TX0132578 WQ0004921000 3002 94393 81708 HAP12 96576 ACA001A 4800500043 TXR15KN84 ACA001A
Location:	NE JUNCTION OF LOOP 287 ST HWY 103 AND KURTH I		
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	July 22, 2011		
Agency Decision Requiring Compliance History:	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.		
Compliance Period:	March 05, 2005 to July 22, 2011		

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: John Onyenobi Phone: 239 - 6707

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.)

1	02/25/2010	(792558)
2	04/28/2010	(795802)
3	04/20/2011	(900140)
4	06/15/2011	(923963)
- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date:	02/25/2010 (792558)	CN603188699
Self Report?	NO	Classification: Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TXR15KN84 Part III, Section B (2)(b) PERMIT	
Description:	Failure to identify Mr. Evans as the responsible party to install and maintain BMPs.	

Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TXR15KN84 Part III, Section F (2)(b)(ii) PERMIT		
Description:	The following records were not maintained or attached to or referenced in the SWP3: dates of major grading activities, dates when construction activities temporarily or permanently cease on a portion of the site, and dates when stabilization measures are initiated.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TXR15KN84 Part III, Section F (4)(d) PERMIT		
Description:	There were no velocity dissipation devices located at discharge locations and along the length of any outfall channel.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TXR15KN84 Part III, Section F (6)(a-b) PERMIT		
Description:	Failure to maintain BMPs in an effective operating condition.		
Self Report?	NO	Classification:	Moderate
Citation:	30 TAC Chapter 281, SubChapter A 281.25(a)(4) TXR15KN84 Part III, Section F (7)(e) PERMIT		
Description:	Failure to maintain inspection reports.		
Self Report?	NO	Classification:	Moderate
Citation:	TWC Chapter 26 26.121(a)(2)		
Description:	Failure to prevent an Unauthorized Discharge.		
Date:	04/21/2011 (900140)	CN603188699	
Self Report?	NO	Classification:	Minor
Citation:	30 TAC Chapter 122, SubChapter B 122.143(4) 30 TAC Chapter 122, SubChapter B 122.146(2) 5C THSC Chapter 382 382.085(b) General Terms and Conditions OP		
Description:	Failure to submit the Annual Compliance Certification in a timely manner.		

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

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

Mr. Mark Knippa
Aspen Power LLC
800 Bering Drive, Suite 250
Houston, Texas 77057

Re: Aspen Power LLC, TPDES Permit No. WQ0004921000
(RN105224877; CN603188699)

Dear Mr. Knippa:

Enclosed is a copy of the above referenced permit for a wastewater treatment facility issued on behalf of the Executive Director pursuant to Chapter 26 of the Texas Water Code.

If you are receiving a Texas Pollutant Discharge Elimination System (TPDES) discharge permit and your system is a new facility or an existing facility that has been reporting to the Texas Commission on Environmental Quality (TCEQ), you may comply with self-reporting requirements by submitting discharge monitoring reports (DMR) electronically over the Web through STEERS (see enclosed flyer). Information about the electronic DMR (NetDMR) system is available at www.tceq.state.tx.us/goto/NetDMR. We encourage electronic reporting. Discharge facilities that do not use the NetDMR system will receive paper DMR forms and instructions from the TCEQ Enforcement Division or from the U.S. Environmental Protection Agency (EPA) if the facility has been submitting DMRs to EPA.

If you are receiving a land application (no discharge) permit and are required to report monitoring results, self-reporting forms and instructions will be forwarded to you by the TCEQ Enforcement Division.

Enclosed is a "Notification of Completion of Wastewater Treatment Facilities" form. Use this form when the facility begins to operate or goes into a new phase. The form notifies the agency when the proposed facility is completed or when it is placed in operation. This notification complies with the special provision incorporated into the permit. When the agency receives this form, the appropriate permit requirements will be activated in the compliance system database so that accurate monitoring and reporting can occur.

Mr. Mark Knippa
Page 2

Should you have any questions, please contact Mr. John Onyenobi, P.E. of the TCEQ's Wastewater Permitting Section at (512) 239-4671 or if by correspondence, include MC 148 in the letterhead address at the bottom of the previous page.

Sincerely,

Charles W. Maguire, Director
Water Quality Division
Texas Commission on Environmental Quality

CWM/JO/gv

Enclosures

ccs: TCEQ, Region 10

Mr. Danny M. Vines, Aspen Power LLC, 5138 Ted Trout Drive, Lufkin, Texas 75915



TPDES PERMIT NO. WQ0004921000
[For TCEQ office use only -
EPA I.D. No. TX0132578]

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

Aspen Power LLC

whose mailing address is

800 Bering Drive, Suite 250
Houston, Texas 77057

is authorized to treat and discharge wastes from the Aspen Power Lufkin Generating Plant, (SIC 4911)

located approximately 0.5 mile east of the intersection of State Highway 103 and Kurth Drive in the City of Lufkin, Angelina County, Texas

to unnamed tributary; thence to Ellen Trout Lake; thence to Mill Creek; thence to Paper Mill Creek; thence to Angelina River/Sam Rayburn Reservoir in Segment No. 0615 of the Neches River Basin

only according to 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 on August 1, 2014.

ISSUED DATE:

For the Commission

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

- During the period beginning upon the date of issuance and lasting through the date of expiration, the permittee is authorized to discharge cooling tower blowdown commingled with previously monitored effluent (low volume wastes) (*1) subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.214 million gallons per day (MGD).

Effluent Characteristics	Discharge Limitations		Single Grab	Minimum Self-Monitoring Requirements	
	Daily Average	Daily Maximum		Report Daily Average and Daily Maximum	Measurement Frequency
Flow (MGD)					
Temperature (degrees F) (*3)	(Report)	(Report)	N/A	Continuous (*2)	Record
Free Available Chlorine (*4)	N/A	(93)	N/A	Continuous	Record
Total Phosphorus	0.03	0.07	0.5	1/week	Composite (*4)
Total Dissolved Solids	1.79	3.76	2.1	1/week	Grab
Total Chloride	1491	3145	1753	1/week	Grab
	Report	Report	Report	1/week	Grab

- (*1) See Other Requirements, Provision No. 7.
- (*2) The use of pump curve data, pump operating time periods, and recording in a log book is acceptable.
- (*3) See Other Requirements, Provision No. 5.
- (*4) Sample shall be representative of periods of chlorination.

- The pH shall not be less than 6.0 standard units or greater than 9.0 standard units and shall be monitored 1/week, by grab sample.
- There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
- Effluent monitoring samples shall be taken at the following location: At Outfall 001, east plant boundary at Mill Creek.

EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

1. During the period beginning upon the date of issuance and lasting through the date of expiration, the permittee is authorized to discharge low volume waste (*1) subject to the following effluent limitations:

Volume: Intermittent and flow variable.

Effluent Characteristics	Discharge Limitations		Minimum Self-Monitoring Requirements	
	Daily Average mg/l	Daily Maximum mg/l	Single Grab mg/l	Report Daily Average and Daily Maximum Measurement Frequency Sample Type
Flow (MGD)	(Report)	(Report)	N/A	1/day (*2)
Total Suspended Solids	30	100	100	1/week (*2) Flow-meter Grab
Oil and Grease	15	20	20	1/week (*2) Grab

(*1) See Other Requirements, Provision No. 7.
(*2) When discharge occurs.

2. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored 1/week (*2), by grab sample.

3. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

4. Effluent monitoring samples shall be taken at the following location: At Outfall 101, where the low volume waste are discharged into the wastewater collection basin prior to commingling with other wastestream.

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 Texas Water Code §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 a 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 (Fecal coliform, E. coli, or Enterococci) - the number of colonies 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 nth 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 of made in a calendar month. For any

measurement of bacteria equaling zero, a substitute 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 20th day of the following month for each discharge that 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; TCW Chapters 26, 27, and 28; and THSC 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 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 Chapter 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 that 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 that 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 that 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) that 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 that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that 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 that 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 that 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 Texas Water Code §§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 Chapter 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 that are not described in the permit application or that 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 that 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 Texas Water Code 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(15)) 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;
 - ii. the permit number(s);
 - iii. the bankruptcy court in which the petition for bankruptcy was filed; and
 - iv. 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 Land Application 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).
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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 that 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 Corrective Action 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 Permitting and Remediation Support 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 Chapter 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 Chapter 335 do not apply, sludge and solid wastes, including tank cleaning and contaminated solids for disposal, shall be disposed of in accordance with THSC Code Chapter 361.

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OTHER REQUIREMENTS

1. Violations of daily maximum limitations for the following pollutants shall be reported orally or by facsimile to TCEQ Region 10, within 24 hours from the time the permittee becomes aware of the violation followed by a written report within five working days to TCEQ Region 10 and the Enforcement Division (MC 224): None.
2. There shall be no discharge of water contaminated with transformer oil from the transformer fire protection drain.
3. There shall be no discharge of polychlorinated biphenyl compounds such as those commonly used for transformer fluid.
4. There shall be no discharge of domestic wastewater. All domestic wastewater shall be routed to the City of Lufkin publicly owned treatment works (POTW).
5. Daily average temperature is defined as the flow weighted average temperature (FWAT) and shall be computed and recorded on a daily basis. FWAT shall be computed at equal time intervals not greater than two hours. The method of calculating FWAT is as follows:

$$\text{FWAT} = \frac{\text{SUMMATION (INSTANTANEOUS FLOW X INSTANTANEOUS TEMPERATURE)}}{\text{SUMMATION (INSTANTANEOUS FLOW)}}$$

~~“Daily average temperature shall be the arithmetic average of all FWAT’s calculated during the calendar month.”~~

~~“Daily maximum temperature shall be the highest FWAT calculated during the calendar month.”~~

For continuous temperature measurements taken in accordance with Page 2 of this permit, the reporting requirements in MONITORING AND REPORTING REQUIREMENT, Item 7 may be omitted if the continuously recorded temperature does not exceed the Daily Maximum temperature for more than 30 minutes for any single exceedance and not more than a total of 7 hours and 26 minutes in any 31 days period.

6. The term “free available chlorine” shall mean the value obtained using the amperometric titration method for free available chlorine described in “Standard Method for the Examination of Water and Wastewater”.

Neither free available chlorine nor total residual chlorine may be discharged from any unit for more than two hours in any one day and not more than one unit in any plant may discharge free available chlorine or total residual chlorine at any one time unless the permittee can demonstrate to the permitting Agency that the units in a particular location cannot operate at or below the limitations specified in this permit.

7. The term “low volume waste” means, any wastewater from, but not limited to: wet scrubber air pollution control systems, ion exchanger water treatment system, water treatment (reverse osmosis regeneration and filter backwash), evaporator and boiler blowdown, laboratory and sampling streams, floor drainage, cooling tower basin cleaning wastes, oil/water separator supernatant from floor and equipment drains, contact storm water from operating areas such as the steam turbine generator, condenser and condenser pumps and combustion turbines, and blowdown from re-circulating house service water systems. Sanitary and air conditioning wastes are not included.
8. The permittee shall conduct effluent sampling and reporting in accordance with 30 TAC 319.5 – 319.6. A monthly effluent report must be submitted each month by 25th day of the following month for each discharge which is described by this permit whether or not a discharge is made for that month. Knowingly making any false statement on any such report may result in the impression of criminal and/or civil penalties as provided by State law.

The provision supersedes and replaces Provision 1 Self Reporting as defined on Page 4 of this permit.

9. All wastewater retention ponds shall be operated in such a manner as to maintain a minimum free board of two feet.
 10. There is no mixing zone established for this discharge to an intermittent stream. Acute toxic criteria apply at the point of discharge.
 11. Reporting requirements according to 30 TAC Sections 319.1-319.11 and any additional effluent reporting requirements contained in the 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 _) 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 and prior to completion of each additional phase on Notification of Completion Form 20007.
 12. The 126 priority pollutants (Appendix A of Part 423) contained in chemical added for cooling tower maintenance, except chromium and zinc, shall be limited in the discharge to "no detectable amount". If used, total chromium shall be limited to 0.2 mg/l maximum at any time and total zinc shall be limited to 1.0 mg/l maximum at any time. The total chromium or total zinc parameters shall be monitored weekly by grab sample. The results shall be reported on the Discharge Monitoring Reports.
 13. Attachment 1 (Table 1) shall be completed with the analytical results for Outfall 001 and sent to the TCEQ, Wastewater Permitting Section (MC-148), within 90 days following permit issuance or initial discharge. Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations and/or monitoring requirements.
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Table 1: Analysis is required for all pollutants. Wastewater shall be sampled and analyzed for those parameters listed in Table 1 for a minimum of four (4) separate sampling events which are a minimum of one (1) week apart.

14. This permit does not authorize the discharge of metal cleaning wastewater.

ATTACHMENT 1

TABLE 1

Outfall No.: 001	<input type="checkbox"/> C <input type="checkbox"/> G	Effluent Concentration (mg/l)				
Pollutants		Samp.	Samp.	Samp.	Samp.	Average
BOD (5-day)						
CBOD (5-day)						
Chemical Oxygen Demand						
Total Organic Carbon						
Dissolved Oxygen						
Ammonia Nitrogen						
Total Suspended Solids						
Nitrate Nitrogen						
Total Organic Nitrogen						
Total Phosphorus						
Oil and Grease						
Total Residual Chlorine						
Total Dissolved Solids						
Sulfate						
Chloride						
Fluoride						
Fecal-Coliform						
Temperature (°F)						
pH (Standard Units; min/max)						
		Effluent Concentration (µg/l)				MAL (µg/l)
Total Aluminum						30
Total Antimony						30
Total Arsenic						10
Total Barium						10
Total Beryllium						5
Total Cadmium						1
Total Chromium						10
Trivalent Chromium						N/A
Hexavalent Chromium						10
Total Copper						10
Cyanide						20
Total Lead						5
Total Mercury						0.2
Total Nickel						10
Total Selenium						10
Total Silver						2.0
Total Thallium						10
Total Zinc						5

STATEMENT OF BASIS/TECHNICAL SUMMARY AND
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DESCRIPTION OF APPLICATION

Applicant: Aspen Power LLC; Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004921000, (TX0132578).

Regulated Activity: Industrial Wastewater Permit.

Type of Application: New Permit.

Request: New Permit.

Authority: Federal Clean Water Act §402; Texas Water Code §26.027; 30 TAC Chapter 305, Subchapters C-F, Chapters 307 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. It is proposed the permit be issued to expire on August 1, 2014 in accordance with 30 TAC §305.71, Basin Permitting.

REASON FOR PROJECT PROPOSED

The applicant has applied to the Texas Commission on Environmental Quality for a new permit.

PROJECT DESCRIPTION AND LOCATION

The applicant proposes to operate the Aspen Power Lufkin Generating Plant, a biomass-fired steam electric power generation facility.

The facility will generate wastewater from cooling tower blowdown, boiler blowdown, de-ionization regeneration water, filtration back wash, reverse osmosis (RO) regeneration wastewater, domestic raw water, and storm water. Treated water for domestic use will be purchased from the City of Lufkin and raw water for process use will be produced from a deep well owned by Aspen Power indentified as Texas Water Development Board Well #3743102. Boiler and cooling tower feed water will be produced from a deep well. The applicant proposed to discharge cooling tower blowdown and low volume wastewater via Outfall 001. The cooling tower water will cool steam through a non contact process steam condensate and will return to the boiler in a closed loop. Domestic wastewater will be discharged to the City of Lufkin publicly owned treatment works (POTW). Storm water will be discharged under the authority of the Texas Pollutant Discharge Elimination System Multi-sector Industrial General Permit for Storm water (TXR050000).

The plant site is located approximately 0.5 mile east of the intersection of State Highway 103 and Kurth Drive in the City of Lufkin, Angelina County County, Texas.

The effluent is discharged to unnamed tributary; thence to Ellen Trout Lake; thence to Mill Creek; thence to Paper Mill Creek; thence to Angelina River/Sam Rayburn Reservoir in Segment No. 0615 of the Neches River Basin. The unclassified receiving waters have no significant aquatic life use for the unnamed tributary and high aquatic life use for Ellen Trout Lake. The designated uses for Segment No. 0615 are contact recreation, intermediate aquatic life use and public water supply. The effluent limits in the draft permit will maintain and protect the existing instream uses. All determinations are preliminary and subject to additional review and/or revisions.

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In accordance with 30 TAC §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. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Ellen Trout Lake, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The discharge from this permit 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.

The Angelina River/Sam Rayburn Reservoir (Segment No. 0615) is currently listed on the State's inventory of impaired and threatened waters, the 2008 Clean Water Act Section 303(d) list. The listing downstream of Paper Mill Creek is for depressed levels of dissolved oxygen, impaired fish community, and mercury in edible tissue, and bacteria (AU 0615_02). Impairment for mercury in tissue and low dissolved oxygen is upstream of Paper Mill Creek (AU 0615_01). In addition, the lower 9 miles of Paper Mill Creek (unclassified water body) are impaired for elevated levels of bacteria (AU 0615_01). Information provided in the application by the applicant indicates that mercury is not present in the effluent discharged, and it is not expected to contribute to impairment of fish community. This applicant is not proposing to discharge oxygen demanding constituents therefore this permit action should not result in contribution of oxygen demanding constituents delivered to Segment No. 0615. Other Requirement No. 4 in the draft permit explicitly prohibits the discharge of domestic wastewater. Therefore, discharges from this facility are not expected to cause or contribute to the bacterial impairment in Segment No. 0615.

SUMMARY OF EFFLUENT DATA

Self-reporting data is not available because the facility has not been constructed.

PROPOSED PERMIT CONDITIONS

The draft permit authorizes a discharge of cooling tower blowdown and low volume waste (wastewater from the boiler blowdown, de-ionization regeneration water, filtration back wash flush, reverse osmosis regeneration wastewater, raw water, and storm water from Outfall 101) at a daily average flow not to exceed 214,560 gallons per day via Outfall 001.

Final effluent limitations are established in the draft permit as follows:

<u>Outfall Number</u>	<u>Pollutant</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
001	Flow (MGD)	(0.214)	(0.45)
	Temperature (degrees F)	N/A	(93)
	Free Available Chlorine	0.2 mg/l	0.5 mg/l
		0.03 lb/day	0.07 lb/day
	Total Phosphorus	1.0 mg/l	2.1 mg/l
		1.79 lbs/day	3.76 lbs/day

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<u>Outfall Number</u>	<u>Pollutant</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
	Total Dissolved Solids	831 mg/l 1491 lbs/day	1753 mg/l 3145 lbs/day
	Total Chloride	Report	Report
	pH, standard units (SU)	6.0 SU (minimum)	9.0 SU (maximum)
101	Flow (MGD)	(Report)	(Report)
	Total Suspended Solids	30 mg/l	100 mg/l
	Oil and Grease	15 mg/l	20 mg/l
	pH, standard units (SU)	6.0 SU (minimum)	9.0 SU (maximum)

Regulations promulgated in Title 40 of the Code of Federal Regulations require technology-based limitations be placed in wastewater discharge permits based on effluent limitations guidelines, where applicable, and/or on best professional judgment (BPJ) in the absence of guidelines.

The discharge of cooling tower blowdown and low volume wastewater via Outfall 001 from a biomass-fired electric generating facility is not subject to effluent limitation guidelines at 40 CFR 423 which establishes standards for Steam Electric Power Plants, but are applied based on BPJ.

Effluent limitations established for free available chlorine (FAC) at Outfall 001 are based on New Source Performance Standards for cooling tower blowdown, 40 CFR § 423.15(j)(i). Mass limits were derived since the discharge will be continuous when the plant is in operation. Effluent limitations for total suspended solids and oil and grease at Outfall 101 are based on BPJ. The concentration limitations were derived from EPA categorical guideline for new source performance standards for low volume wastes, 40 CFR § 423.15(c). The limits are expressed in concentration only due to the intermittent and flow variability of the low volume wastes. Effluent limitations for pH at Outfalls 001 and 101 are based on BPJ in accordance with 40 CFR § 423.15(a).

Temperature effluent limits and monitoring requirements at Outfall 001 are based on BPJ. The daily maximum for temperature effluent limit is the segment criterion. Derivation of water quality-based limits and monitoring requirements for the protection of aquatic life for total phosphorus, total dissolved solids and total chlorides are based on Standards Implementation Team memorandum dated June 4, 2010.

Water quality-based effluent limitations for the protection of aquatic life are presented at Appendix A. Aquatic life criteria established in Tables 1 and 3 of 30 TAC 307 are incorporated into the menu as well as recommendations by the Water Quality Assessment Section memorandum dated April 30, 2010. TCEQ practice for determining significant potential is to compare the reported analytical data from the facility against percentages of the calculated daily average water quality-based effluent limitation. Permit limitations are required when analytical data reported in the application exceeds 85 percent of the calculated daily average water quality-based effluent limitation. Monitoring and reporting is required when analytical data reported in the application exceeds 70 percent of the calculated daily average water quality-based effluent limitation. No analytical data is available for screening against water quality-based effluent limitations since the facility is not in operation, therefore, Other Requirement No. 13 has been added to the draft permit.

SUMMARY OF CHANGES FROM APPLICATION

No changes were made from the application.

See the next section for additional changes to the existing permit.

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SUMMARY OF CHANGES FROM EXISTING PERMIT

The permittee requested the following changes in their amendment request that the Executive Director has recommended granting.

N/A - New Permit

The following additional changes have been made to the draft permit.

N/A - This is a new permit.

BASIS FOR PROPOSED DRAFT PERMIT

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

1. Application submitted with letter dated March 5, 2010, additional information submitted with letter dated April 7, 2010 and revised Application, page 6 and 7 dated August 3, 2010.
2. Existing permits: N/A - This is a new permit.
3. TCEQ Rules.
4. Texas Surface Water Quality Standards - 30 TAC §§307.1-307.10, effective August 17, 2000, and Appendix E, effective February 27, 2002.
5. "Procedures to Implement the Texas Surface Water Quality Standards," Texas Commission on Environmental Quality, January 2003.
6. Memos from the Water Quality Standards Team and the Water Quality Assessment Team of the Water Quality Assessment Section of the TCEQ.
7. "Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits," TCEQ Document No. 98-001.000-OWR-WQ, May 1998.
8. EPA Effluent Guidelines: N/A - 40 CFR 423, NSPS applied based on BPJ.
9. Consistency with the Coastal Management Plan: N/A

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.

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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 John O. Onyenobi, P.E., NSPE at (512) 239-6707.

John O. Onyenobi

John O. Onyenobi, P.E., NSPE

July 28, 2010

Date

STATEMENT OF BASIS / TECHNICAL SUMMARY AND
EXECUTIVE DIRECTOR'S PRELIMINARY DECISION
TPDES Permit No. WQ0004921000

Appendix A
Calculated Water Quality-Based Effluent Limits

TEXTOX MENU #8 - INTERMITTENT STREAM WITHIN 3 MILES OF A LAKE OR RESERVOIR

The water quality-based effluent limitations demonstrated below are calculated using:

Table 1, 2000 Texas Surface Water Quality Standards (30 TAC.307) for Freshwater Aquatic Life

Table 3, 2000 Texas Surface Water Quality Standards for Human Health

"Procedures to Implement the Texas Surface Water Quality Standards," Texas Commission on Environmental Quality, January 2003.

PERMITTEE INFORMATION:

Permittee Name: Aspen Power, LLC
TPDES Permit No: WQ0004921000
Outfall No: 001
Prepared by: Onyenobi, J.
Date: July 28, 2010

DISCHARGE INFORMATION:

Intermittent Receiving Waterbody: Unnamed Tributary
TSS (mg/L) (Intermittent): 7.45
pH (Standard Units) (Intermittent): 6.5
Hardness (mg/L as CaCO₃) (Intermittent): 29.8
Chloride (mg/L) (Intermittent): 42
Effluent Flow for Aquatic Life (MGD): 0.214
Percent Effluent for Zone of Initial Dilution: 100
Lake or Reservoir Receiving Waterbody: Ellen Trout Lake
Segment No.: 615
TSS (mg/L) (Lake or Reservoir): 7.45
pH (Standard Units) (Lake or Reservoir): 6.5
Hardness (mg/L as CaCO₃) (Lake or Reservoir): 29.8
Chloride (mg/L) (Lake or Reservoir): 42
Percent Effluent for Mixing Zone: 100
Percent Effluent for Zone of Initial Dilution: 100
Effluent Flow for Human Health (MGD): 0.214
Percent Effluent for Human Health: 74
Public Water Supply Use?: Yes

CALCULATE TOTAL/DISSOLVED RATIO:

<i>Stream/River Metal</i>	<i>Intercept</i>		<i>Partition Coefficient (Kp)</i>	<i>Dissolved Fraction (Cd/Ct)</i>		<i>Water Effects Ratio (WER)</i>	
	<i>(b)</i>	<i>Slope (m)</i>	<i>(Kp)</i>	<i>(Cd/Ct)</i>			
Aluminum	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Arsenic	5.68	-0.73	110490.75	0.55		1.00	Assumed
Cadmium	6.6	-1.13	411588.67	0.25		1.00	Assumed
Chromium (Total)	6.52	-0.93	511557.75	0.21		1.00	Assumed
Chromium (+3)	6.52	-0.93	511557.75	0.21		1.00	Assumed
Chromium (+6)	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Copper	6.02	-0.74	236921.44	0.36		1.00	Assumed
Lead	6.45	-0.8	565294.79	0.19		1.00	Assumed
Mercury	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Nickel	5.69	-0.57	155908.91	0.46		1.00	Assumed
Selenium	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Silver	6.38	-1.03	303164.98	0.31		1.00	Assumed
Zinc	6.1	-0.7	308667.29	0.30		1.00	Assumed

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Lake Metal	Intercept		Partition	Dissolved	Assumed	Water	Assumed
	(b)	Slope (m)	Coefficient (Kp)	Fraction (Cd/Ct)		Effects Ratio (WER)	
Aluminum	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Arsenic	5.68	-0.73	110490.75	0.55		1.00	Assumed
Cadmium	6.55	-0.92	559263.18	0.194		1.00	Assumed
Chromium (Total)	6.34	-0.27	1272089.91	0.10		1.00	Assumed
Chromium (+3)	6.34	-0.27	1272089.91	0.10		1.00	Assumed
Chromium (+6)	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Copper	6.45	-0.9	462444.22	0.22		1.00	Assumed
Lead	6.31	-0.53	704299.17	0.16		1.00	Assumed
Mercury	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Nickel	6.34	-0.76	475511.73	0.22		1.00	Assumed
Selenium	N/A	N/A	N/A	1.00	Assumed	1.00	Assumed
Silver	6.38	-1.03	303164.98	0.31		1.00	Assumed
Zinc	6.52	-0.68	845149.88	0.14		1.00	Assumed

AQUATIC LIFE
CALCULATE DAILY AVERAGE AND DAILY MAXIMUM EFFLUENT LIMITATIONS

Parameter	Acute	Acute	Chronic	WLAa	WLAa	WLAc	LTAa	LTAa	LTAc	Daily	Daily
	Standard (immedat e) (ug/L)	Standard (perennia l) (ug/L)		Standard (ug/L)	(intermitte nt)		(perenni a)	(intermitte nt)		(perenni a)	Avg. (ug/L)
Aldrin	3	3	N/A	3.00	3.00	N/A	1.72	0.96	N/A	1.41	2.99
Aluminum	991	991	N/A	991.00	991.00	N/A	567.84	317.12	N/A	466.17	986.24
Arsenic	360	360	190	656.34	656.34	346.40	376.08	210.03	211.30	308.74	653.19
Cadmium	8.366	8.366	0.399	34.02	43.23	2.06	19.49	13.83	1.26	1.85	3.91
Carbaryl	2	2	N/A	2.00	2.00	N/A	1.15	0.64	N/A	0.94	1.99
Chlordane	2.4	2.4	0.0043	2.40	2.40	0.00	1.38	0.77	0.00	0.00	0.01
Chlorpyrifos	0.083	0.083	0.041	0.08	0.08	0.04	0.05	0.03	0.03	0.04	0.08
Chromium (+3)	203.586	203.586	66.041	979.47	2132.99	691.92	561.24	682.56	422.07	620.44	1312.64
Chromium (+6)	15.700	15.700	10.6	15.70	15.70	10.60	9.00	5.02	6.47	7.39	15.62
Copper	5.889	5.889	4.366	16.28	26.18	19.41	9.33	8.38	11.84	12.31	26.05
Cyanide	45.78	45.78	10.69	45.78	45.78	10.69	26.23	14.65	6.52	9.59	20.28
4,4'-DDT	1.1	1.1	0.001	1.10	1.10	0.00	0.63	0.35	0.00	0.00	0.00
Dementon	N/A	N/A	0.1	N/A	N/A	0.10	N/A	N/A	0.06	0.09	0.19
Dicofol	59.3	59.3	19.8	59.30	59.30	19.80	33.98	18.98	12.08	17.75	37.56
Dieldrin	2.5	2.5	0.0019	2.50	2.50	0.00	1.43	0.80	0.00	0.00	0.00
Diuron	210	210	70	210.00	210.00	70.00	120.33	67.20	42.70	62.77	132.80
Endosulfan I (alpha)	0.22	0.22	0.056	0.22	0.22	0.06	0.13	0.07	0.03	0.05	0.11
Endosulfan II (beta)	0.22	0.22	0.056	0.22	0.22	0.06	0.13	0.07	0.03	0.05	0.11
Endosulfan sulfate	0.22	0.22	0.056	0.22	0.22	0.06	0.13	0.07	0.03	0.05	0.11
Endrin	0.18	0.18	0.0023	0.18	0.18	0.00	0.10	0.06	0.00	0.00	0.00
Guthion	N/A	N/A	0.01	N/A	N/A	0.01	N/A	N/A	0.01	0.01	0.02
Heptachlor	0.52	0.52	0.0038	0.52	0.52	0.00	0.30	0.17	0.00	0.00	0.01
Hexachlorocyclohexane (Lindane)	2	2	0.08	2.00	2.00	0.08	1.15	0.64	0.05	0.07	0.15
Lead	15.542	15.542	0.540	81.00	97.09	3.37	46.41	31.07	2.06	3.02	6.39
Malathion	N/A	N/A	0.01	N/A	N/A	0.01	N/A	N/A	0.01	0.01	0.02
Mercury	2.400	2.400	1.3	2.40	2.40	1.30	1.38	0.77	0.79	1.13	2.39
Methoxychlor	N/A	N/A	0.03	N/A	N/A	0.03	N/A	N/A	0.02	0.03	0.06
Mirex	N/A	N/A	0.001	N/A	N/A	0.00	N/A	N/A	0.00	0.00	0.00
Nickel	508.239	508.239	56.444	1098.57	2308.71	256.40	629.48	738.79	156.40	229.91	486.42
Parathion (ethyl)	0.065	0.065	0.013	0.07	0.07	0.01	0.04	0.02	0.01	0.01	0.02
Pentachlorophenol	5.488	5.488	3.464	5.49	5.49	3.46	3.14	1.76	2.11	2.58	5.46
Phenanthrene	30	30	30	30.00	30.00	30.00	17.19	9.60	18.30	14.11	29.86
Polychlorinated Biphenyls (PCBs)	2	2	0.014	2.00	2.00	0.01	1.15	0.64	0.01	0.01	0.03
Selenium	20	20	5	20.00	20.00	5.00	11.46	6.40	3.05	4.48	9.49
Silver, (free ion)	0.8	0.8	N/A	9.76	9.76	N/A	5.59	3.12	N/A	4.59	9.71
Toxaphene	0.78	0.78	0.0002	0.78	0.78	0.00	0.45	0.25	0.00	0.00	0.00
Tributyltin (TBT)	0.13	0.13	0.024	0.13	0.13	0.02	0.07	0.04	0.01	0.02	0.05
2,4,5 Trichlorophenol	136	136	64	136.00	136.00	64.00	77.93	43.52	39.04	57.39	121.41
Zinc	41.031	41.031	37.467	135.38	299.38	273.38	77.57	95.80	166.76	114.04	241.26

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HUMAN HEALTH

CALCULATE DAILY AVERAGE AND DAILY MAXIMUM EFFLUENT LIMITATIONS

Parameter	Water and		WLAh	LTAh	Daily Avg. (ug/L)	Daily Max. (ug/L)
	FW Fish (ug/L)	FW Fish Only (ug/L)				
Acrylonitrile	1.28	10.9	1.73	1.61	2.36	5.00
Aldrin	0.00408	0.00426	0.01	0.01	0.01	0.02
Arsenic	50	N/A	123.19	114.56	168.41	356.29
Barium	2000	N/A	2702.70	2513.51	3694.86	7817.03
Benzene	5	106	6.76	6.28	9.24	19.54
Benidine	0.00106	0.00347	0.00	0.00	0.00	0.00
Benzo(a)anthracene	0.099	0.81	0.13	0.12	0.18	0.39
Benzo(a)pyrene	0.099	0.81	0.13	0.12	0.18	0.39
Bis(chloromethyl)ether	0.00462	0.0193	0.01	0.01	0.01	0.02
Cadmium	5	N/A	34.91	32.47	47.72	100.97
Carbon Tetrachloride	3.76	8.4	5.08	4.73	6.95	14.70
Chlordane	0.021	0.0213	0.03	0.03	0.04	0.08
Chlorobenzene	776	1380	1048.65	975.24	1433.61	3033.01
Chloroform	100	1292	135.14	125.68	184.74	390.85
Chromiumd	100	3320	775.30	721.03	1059.92	2242.41
Chrysene	0.417	8.1	0.56	0.52	0.77	1.63
Cresols	3313	13116	4477.03	4163.64	6120.54	12948.91
Cyanide	200	N/A	270.27	251.35	369.49	781.70
4,4'-DDD	0.0103	0.01	0.01	0.01	0.02	0.04
4,4'-DDE	0.0073	0.007	0.01	0.01	0.01	0.03
4,4'-DDT	0.0073	0.007	0.01	0.01	0.01	0.03
2,4'-D	70	N/A	94.59	87.97	129.32	273.60
Danitol	0.709	0.721	0.96	0.89	1.31	2.77
Dibromochloromethane	9.2	71.6	12.43	11.56	17.00	35.96
1,2-Dibromoethane	0.014	0.335	0.02	0.02	0.03	0.05
1,3-Dichloropropene (1,3- Dichloropropylene)	22.8	161	30.81	28.65	42.12	89.11
Dieldrin	0.00171	0.002	0.00	0.00	0.00	0.01
p-Dichlorobenzene	75	N/A	101.35	94.26	138.56	293.14
1,2-Dichloroethane	5	73.9	6.76	6.28	9.24	19.54
1,1-Dichloroethylene	1.63	5.84	2.20	2.05	3.01	6.37
Dicofol	0.215	0.217	0.29	0.27	0.40	0.84
Dioxins/Furans (TCDD Equivalents)	1.34E-07	1.40E-07	1.81E-07	1.68E-07	2.48E-07	5.24E-07
Endrin	1.27	1.34	1.72	1.60	2.35	4.96
Fluoride	4000	N/A	5405.41	5027.03	7389.73	15634.05
Heptachlor	0.0026	0.00265	0.00	0.00	0.00	0.01
Heptachlor Epoxide	0.159	1.1	0.21	0.20	0.29	0.62
Hexachlorobenzene	0.0194	0.0198	0.03	0.02	0.04	0.08
Hexachlorobutadiene	2.99	3.6	4.04	3.76	5.52	11.69
Hexachlorocyclohexane (alpha)	0.163	0.413	0.22	0.20	0.30	0.64
Hexachlorocyclohexane (beta)	0.57	1.45	0.77	0.72	1.05	2.23
Hexachlorocyclohexane (gamma) (Lindane)	0.2	2	0.27	0.25	0.37	0.78
Hexachloroethane	84.2	278	113.78	105.82	155.55	329.10
Hexachlorophene	0.0531	0.053	0.07	0.07	0.10	0.21
Lead	4.98	25.3	42.04	39.10	57.47	121.59
Mercury	0.0122	0.0122	0.02	0.02	0.02	0.05
Methoxychlor	2.21	2.22	2.99	2.78	4.08	8.64
Methyl Ethyl Ketone	5.29E+04	9.94E+06	7.15E+04	6.65E+04	9.77E+04	2.07E+05
Nitrate-Nitrogen (as Total Nitrogen)	10000	N/A	13513.51	12567.57	18474.32	39085.14
Nitrobenzene	37.3	233	50.41	46.88	68.91	145.79
N-Nitrosodiethylamine	0.0382	7.68	0.05	0.05	0.07	0.15
N-Nitroso-di-n-Butylamine	1.84	13.5	2.49	2.31	3.40	7.19
PCB's (Polychlorinated Biphenyls)	0.0013	0.0013	0.00	0.00	0.00	0.01
Pentachlorobenzene	6.1	6.68	8.24	7.67	11.27	23.84
Pentachlorophenol	1	135	1.35	1.26	1.85	3.91
Pyridine	88.1	13333	119.05	110.72	162.76	344.34
Selenium	50	N/A	67.57	62.84	92.37	195.43
1,2,4,5-Tetrachlorobenzene	0.241	0.243	0.33	0.30	0.45	0.94
Tetrachloroethylene	5	323	6.76	6.28	9.24	19.54
Toxaphene	0.005	0.014	0.01	0.01	0.01	0.02
2,4,5-TP (Silvex)	47	50.3	63.51	59.07	86.83	183.70
2,4,5-Trichlorophenol	953	1069	1287.84	1197.69	1760.60	3724.81
Trichloroethylene	5	612	6.76	6.28	9.24	19.54
1,1,1-Trichloroethane	200	12586	270.27	251.35	369.49	781.70
TTHM (Sum of Total Trihalomethanes)	100	N/A	135.14	125.68	184.74	390.85
Vinyl Chloride	2	415	2.70	2.51	3.69	7.82

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CALCULATE 70% AND 85% OF DAILY AVERAGE EFFLUENT LIMITATIONS

Parameter	70%	85%
Aquatic Life		
Aldrin	0.988	1.200
Aluminum	326.316	396.241
Arsenic	216.118	262.429
Cadmium	1.292	1.569
Carbaryl	0.659	0.800
Chlordane	0.003	0.003
Chlorpyrifos	0.026	0.031
Chromium (+3)	434.310	527.377
Chromium (+6)	5.170	6.277
Copper	8.620	10.467
Cyanide	6.710	8.148
4,4'-DDT	0.001	0.001
Dementon	0.063	0.076
Dicofol	12.428	15.091
Dieldrin	0.001	0.001
Diuron	43.938	53.354
Endosulfan (alpha)	0.035	0.043
Endosulfan (beta)	0.035	0.043
Endosulfan sulfate	0.035	0.043
Endrin	0.001	0.002
Guthion	0.006	0.008
Heptachlor	0.002	0.003
Hexachlorocyclohexane (Lindane)	0.050	0.061
Lead	2.116	2.569
Malathion	0.006	0.008
Mercury	0.790	0.960
Methoxychlor	0.019	0.023
Mirex	0.001	0.001
Nickel	160.940	195.427
Parathion (ethyl)	0.008	0.010
Pentachlorophenol	1.807	2.194
Phenanthrene	9.878	11.995
Polychlorinated Biphenyls (PCBs)	0.009	0.011
Selenium	3.138	3.811
Silver, (free ion)	3.213	3.901
Toxaphene	0.000	0.000
Tributyltin (TBT)	0.015	0.018
2,4,5 Trichlorophenol	40.172	48.780
Zinc	79.825	96.930

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Human Health

Acrylonitrile	1.655	2.010
Aldrin	0.005	0.006
Arsenic	11788.552	143.147
Barium	2586.405	3140.635
Benzene	6.466	7.852
Benzidine	0.001	0.002
Benzo(a)anthracene	0.128	0.155
Benzo(a)pyrene	0.128	0.155
Bis(chloromethyl)ether	0.006	0.007
Cadmium	33.407	40.565
Carbon Tetrachloride	4.862	5.904
Chlordane	0.027	0.033
Chlorobenzene	1003.525	1218.566
Chloroform	129.320	157.032
Chromium	741.942	900.929
Chrysene	0.539	0.655
Cresols	4284.381	5202.462
Cyanide	258.641	314.064
4,4'-DDD	0.013	0.016
4,4'-DDE	0.009	0.011
4,4'-DDT	0.009	0.011
2,4'-D	90.524	109.922
Danitof	0.917	1.113
Dibromochloromethane	11.897	14.447
1,2-Dibromoethane	0.018	0.022
1,3-Dichloropropene (1,3- Dichloropropylene)	29.485	35.803
Dieldrin	0.002	0.003
p-Dichlorobenzene	96.990	117.774
1,2-Dichloroethane	6.466	7.852
1,1-Dichloroethylene	2.108	2.560
Dicofol	0.278	0.338
Dioxins/Furans (TCDD Equivalents)	1.73E-07	2.10E-07
Endrin	1.642	1.994
Fluoride	5172.81	6281.27
Heptachlor	0.003	0.004
Heptachlor Epoxide	0.206	0.250
Hexachlorobenzene	0.025	0.030
Hexachlorobutadiene	3.867	4.695
Hexachlorocyclohexane (alpha)	0.211	0.256
Hexachlorocyclohexane (beta)	0.737	0.895
Hexachlorocyclohexane (gamma) (Lindane)	0.259	0.314
Hexachloroethane	108.888	132.221
Hexachlorophene	0.069	0.083
Lead	40.232	48.853
Mercury	0.016	0.019
Methoxyelcor	2.858	3.470
Methyl Ethyl Ketone	6.84E+04	8.31E+04
Nitrate-Nitrogen (as Total Nitrogen)	12932.03	15703.18
Nitrobenzene	48.236	58.573
N-Nitrosodiethylamine	0.049	0.060
N-Nitroso-di-n-Butylamine	2.379	2.889
PCB's (Polychlorinated Biphenyls)	0.002	0.002
Pentachlorobenzene	7.889	9.579
Pentachlorophenol	1.293	1.570
Pyridine	113.931	138.345
Selenium	64.660	78.516

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1,2,4,5-Tetrachlorobenzene	0.312	0.378
Tetrachloroethylene	6.466	7.852
Toxaphene	0.006	0.008
2,4,5-TP (Silvex)	60.781	73.805
2,4,5-Trichlorophenol	1232.422	1496.513
Trichloroethylene	6.466	7.852
1,1,1-Trichloroethane	258.641	314.064
TTHM (Sum of Total Trihalomethanes)	129.320	157.032
Vinyl Chloride	2.586	3.141

Attachment E

TCEQ PERMIT NO. WQ0004921000

APPLICATION BY
ASPEN POWER LLC
FOR TPDES PERMIT NO.
WQ0004921000

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BEFORE THEM 4: 17
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY
CHIEF CLERK'S OFFICE

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application by Aspen Power, LLC (Applicant), for a new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004921000 and on the ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section 55.156, before an application is approved, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letters from Suzbrekensal Investments, Ltd. and its General Partner, Mr. Kenneth Rogers, ("SI Ltd") represented by Timothy J. Karczewski. 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.gov.

I. BACKGROUND

A. Description of Facility

The Applicant proposes to operate the Aspen Power Lufkin Generating Plant, a biomass-fired steam electric power generation facility. The facility will generate wastewater from cooling tower blowdown, boiler blowdown, de-ionization regeneration water, filtration backwash, reverse osmosis (RO) regeneration wastewater, domestic raw water, and storm water. Treated water for domestic use will be purchased from the City of Lufkin and raw water for process use will be produced from a deep well owned by

Aspen Power identified as Texas Water Development Board Well #3743102. Boiler and cooling tower feed water will be produced from a deep well. The applicant proposes to discharge cooling tower blowdown and low volume wastewater via Outfall 001. The cooling tower water will cool steam through a non-contact process steam condensate and will return it to the boiler in a closed loop. Domestic wastewater will be discharged to the City of Lufkin publicly owned treatment works (POTW). Storm water will be discharged under the authority of the TPDES Multi-sector Industrial General Permit for Storm water (TXR050000).

The Applicant has applied for a new permit to authorize the discharge of cooling tower blowdown commingled with low volume wastewater at a daily average flow not to exceed 214,560 gallons per day.

The proposed TPDES Permit No. WQ0004921000 will authorize the discharge of cooling tower blowdown and previously monitored effluent (low volume waste on a flow variable basis via Outfall 101) at a daily average flow not to exceed 214,560 gallons per day via Outfall 001.

The effluent is discharged to an unnamed tributary; thence to Ellen Trout Lake; thence to Mill Creek; thence to Paper Mill Creek; thence to Angelina River/Sam Rayburn Reservoir, in Segment No. 0615 of the Neches River Basin. The unclassified receiving waters have no significant aquatic life use for the unnamed tributary and high aquatic life use for Ellen Trout Lake. The designated uses for Segment No. 0615 are contact recreation, intermediate aquatic life use and public water supply. The effluent limits in the draft permit will maintain and protect the existing instream uses. All determinations are preliminary and subject to additional review and revisions.

The plant site is located approximately 0.5 mile east of the intersection of State Highway 103 and Kurth Drive in the City of Lufkin, Angelina County County, Texas.

B. Procedural Background

The application was submitted on March 5, 2010, and declared administratively complete on April 20, 2010. The Notice of Receipt of Application and Intent to Obtain Permit was published in English and Spanish on May 5, 2010 in the *Lufkin Daily News*

and in *La Lengua Spanish Newspaper*, Angelina County, Texas. The ED completed the technical review of the application on August 9, 2010, and prepared a draft permit. The Notice of Application and Preliminary Decision was published on October 31, 2010 in the *Lufkin Daily News*, and on November 3, 2010 in the *La Lengua Spanish Newspaper* in Angelina County. The comment period for this application closed on December 3, 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.

II. COMMENTS AND RESPONSES

Comment 1:

Mr. Karczewski stated that the route of the proposed discharge passes through a five-acre tract of land owned by SI Ltd immediately downstream from the Aspen Power Plant. In addition, the discharge route is not a natural waterway but rather a man-made course that has occurred only because of the railroad embankment and trestle along the west boundary of the SI Ltd tract. Because of the location of its property in relation to the Aspen Power tract and its proposed discharge, SI Ltd is an affected party as that term is defined by TCEQ Rules.

Response 1:

Under 30 TAC § 55.211, the Commission will decide whether to grant a hearing request unless the matter is directly referred to the State Office of Administrative Hearings. Request for contested case hearings are reviewed under 30 TAC §§ 55.201, 55.203, 55.205, and 55.209. The Commission will consider all relevant factors in the evaluation of whether a request for hearing should be granted, including whether the requestor is an affected person with a “personal justiciable interest related to a legal right, duty, privilege, power, or economic interest” that would be affected by the application. In deciding whether a hearing requestor is an affected person, the Commission will consider whether the interest claimed is one protected by the law

under which the application will be considered; distance restrictions or other limitations imposed by law on the affected interest; whether a reasonable relationship exists between the interest claimed and the activity regulated; likely impact of the regulated activity on the health, safety, and use of property of the person;, and other applicable conditions. The Commission will make this decision at a after the RTC and the Executive Director's decision is mailed to everyone who provided comment requested a contest case hearing no later than the 30th day of mailing of the RTC and final decision, and to anyone on the chief clerk's mailing list for this application.

In the wastewater permitting process, TCEQ is tasked by the Legislature with protecting the quality of the water in the state. Property value 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 does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

Comment 2:

Mr. Karczewski commented that Aspen Power has no legal right to use the water course through the SI Ltd tract for its discharge. Therefore, any such use would constitute a trespass on the part of Aspen Power. For this reason, the TCEQ cannot and should not authorize a permit that is premised upon using the water course as method for the discharging of Aspen Power's effluent. The commenter argues that the TCEQ will invariably argue that the issuance of the permit would not give Aspen Power the right to use private property. The commenter stated that until the matter of the planned trespass is resolved, the issuance of a permit – the sole basis of which is authorizing a discharge through private property - would be an irresponsible governmental act, if not actionable on a constitutional basis as a taking.

Response 2:

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 right 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.

Comment 3:

Mr. Karczewski commented that the water to be discharged is cooling tower blowdown water. As such it will have a higher temperature than the water naturally occurring in the area. This increased temperature will result in the formation of additional bacteria and other pathogens that will serve as a human health risk to persons wishing to utilize the SI Ltd tract. This will also serve as a risk to aquatic life within the receiving waters and adjacent thereto.

Response 3:

The proposed permit does not authorize the Applicant to discharge domestic wastewater, which may be a source of bacteria and other pathogens. The daily maximum limit for temperature effluent in the draft permit corresponds to the temperature criterion for segment 0615, Angelina River/Sam Rayburn Reservoir. The proposed permit was drafted in accordance with 30 TAC Chapter 307, and the "Procedures to Implement the Texas Surface Water Quality Standards," January 2003 (Implementation Procedures). 30 TAC Chapter 307, states that surface waters cannot be made toxic to aquatic or terrestrial organisms. The limit is the segment ambient temperature of the receiving water (93 degrees F). As stated under 307.4(f) the numerical temperature criteria has not been established but the segment ambient temperature is applied based on Best Professional Judgment in order to maintain the

temperature of the surface waters (unnamed tributary; thence to Ellen Trout Lake; thence to Mill Creek; thence to Paper Mill Creek; thence to Angelina River/Sam Rayburn Reservoir in Segment No. 0615 of the Neches River Basin).

Comment 4:

Mr. Karczewski asserted that solvents and other chemicals used in maintaining cooling coils contain hazardous chemicals. Some of these may have long half-lives that will allow for accumulation to unsafe levels.

Response 4:

Appendix A, 40 C.F.R. Part 423 includes chemicals added for cooling tower maintenance. Except for chromium and zinc, these chemicals shall be limited in the discharge to "no detectable amount." If used, total chromium shall be limited to 0.2 mg/l maximum at any time and total zinc shall be limited to 1.0 mg/l maximum at any time. The total chromium or total zinc parameters shall be monitored weekly by grab sample. The use of other chemical additives is not authorized unless approval is obtained and limitations are established on a case-by-case basis in accordance with 40 C.F.R. § 122.62(a).

Comment 5:

Mr. Karczewski commented that some of the chemicals used along with the increased temperature are likely to result in the death of vegetations along the discharge route. The commenter stated that the 1,491 lbs of dissolved solids during each day of discharge will result in an excessive buildup of solids within the receiving waters and the impact of this will be imposed disproportionately on the SI Ltd tract. Under the proposed permit, over 272 tons per year of additional solids will be dumped on the SI Ltd tract. Mr. Karczewski added that the proposed permit as drafted authorizes the discharge of over 26 lbs per day or almost 9,500 lbs per year of grease to be discharged through the SI Ltd tract. This will be hazardous to human health and wild life and negatively impact the value and marketability of the SI Ltd tract.

Response 5:

The draft permit was written in accordance with 30 TAC § 307.4(b) (5). According to this section waste discharge shall not cause substantial and persistent changes from ambient conditions of turbidity or color and to protect the water quality of the receiving stream. Also, surface waters shall be maintained so that oil, grease, or related residue will not produce a visible film of oil or globules of grease on the surface or coat the banks or bottom of the watercourse; or cause toxicity to man, aquatic life, or terrestrial life in accordance with 30 TAC § 307.4(d).

The daily maximum limit for temperature is the segment criterion. The derivation of water quality-based limits and monitoring requirements for the protection of aquatic life for total phosphorus, total dissolved solids and total chlorides are based on Water Quality Standards Implementation Team recommendations. The total dissolved solids (TDS) limit of 1,491 lbs/day or 831 mg/L was calculated according to the Implementation Procedures using the TDS criterion for Segment No. 0615. As a comparison, the maximum allowable concentration of TDS in drinking water is 1,000 mg/l according to 30 TAC, Section 290.118(b). This concentration is not expected to lead to buildup of solids within the receiving waters or on the land downstream, as these solids are dissolved in the water.

The following daily average and daily maximum effluent limitations and monitoring requirements are established in the draft permit:

Outfall 001	Pollutant	Daily Average	Daily Maximum
	Flow (MGD)	(0.214)	(0.45)
	Temperature (degrees F)	N/A	(93)
	Free Available Chlorine	0.2 mg/l 0.03 lb/day	0.5 mg/l 0.07 lb/day
	Total Phosphorus	1.0 mg/l 1.79 lbs/day	2.1 mg/l 3.76 lbs/day
	Total Dissolved Solids	831 mg/l 1491 lbs/day	1753 mg/l 3145 lbs/day
	Total Chloride	Report	Report
	pH, standard units (SU)	(6.0 minimum)	(9.0 maximum)
Outfall 101	Flow (MGD)	(Report)	(Report)
	Total Suspended Solids	30 mg/l	100 mg/l
	Oil and Grease	15 mg/l	20 mg/l
	pH, standard units (SU)	(6.0 minimum)	(9.0 maximum)

The effluent limits in the draft permit will maintain and protect the existing instream uses. In accordance with 30 TAC § 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. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Ellen Trout Lake, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

TCEQ practice for determining significant potential for degradation of water quality is to compare the reported analytical data against percentage of the calculated daily average water quality-based effluent limitation. Permit limitations are required when analytical data reported in the application exceeds 85% of the calculated daily average water quality-based effluent limitation. Monitoring and reporting is required when analytical data reported in the application exceeds 70% of the calculated daily average water quality-based effluent limitation. No analytical data was reported in the application because this is a new permit. Therefore, Other Requirement No. 13 retest requirements were placed in the draft permit for discharges via Outfall 001, requiring testing and possible of amendment by TCEQ after review of the test results.

Comment 6:

Mr. Karczewski stated that the discharge is into Segment 0615 of the Angelina/Neches River, a 303(d) listed stream segment.

Response 6:

The 2008 Clean Water Act Section 303(d) listing is specifically downstream of Paper Mill Creek and is for depressed levels of dissolved oxygen, impaired fish community, mercury in edible tissue, and bacteria. Impairment for mercury in tissue

and low dissolved oxygen is upstream of Paper Mill Creek. In addition, the lower 9 miles of Paper Mill Creek (unclassified water body) are impaired for elevated levels of bacteria. Information provided in the Application by the Applicant indicates that mercury is not present in the effluent discharged, and it is not expected to contribute to impairment of fish communities. The Applicant does not propose to discharge oxygen demanding constituents, therefore this permit action should not result in contribution of oxygen demanding constituents delivered to Segment No. 0615. Other Requirement No. 4 in the draft permit explicitly prohibits the discharge of domestic wastewater. Therefore, discharges from this facility are not expected to cause or contribute to the bacterial impairment in Segment No. 0615.

Changes Made to the Draft Permit in Response to Comment

Based upon comment and water quality data review recommendation by Standards Implementation Team, temperature effluent limitation in the draft permit has been updated:

Final effluent limitations are established in the draft permit as follows:

<u>Outfall Number</u>	<u>Pollutant</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
001	Temperature (degrees F)	N/A	(93)

OTHER CHANGES MADE TO DRAFT PERMIT

Based on staff comment, the following change was made to the draft permit:

<u>Outfall Number</u>	<u>Pollutant</u>	<u>Daily Average</u>	<u>Daily Maximum</u>
001	Flow (MGD)	(0.214)	(0.45)

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

Robert Martinez, Director
Environmental Law Division



Robin Smith
Attorney
Environmental Law Division
State Bar No. 18645600
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-0600
Fax: (512) 239-0606

REPRESENTING THE EXECUTIVE DIRECTOR
OF THE TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on April 18, 2011 the "Executive Director's Response to Public Comment" for Permit No. WQ0004359000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.

Robin Smith

Robin Smith
Attorney
Environmental Law Division
State Bar No. 18645600
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
Phone (512) 239-xxxx
Fax: (512) 239-0606

Mailing List
ASPEN POWER LLC
Permit No. WQ0004921000

FOR THE APPLICANT:

Mr. Mark Knippa
Aspen Power LLC
800 Bering Drive, Suite 250
Houston, Texas 77057
713/554-4477
FAX

Mr. Danny Vines
Aspen Power LLC
P. O. Box 151507
Lufkin, Texas 75915
936/875-5510
936/875-5525

FOR INTERESTED PERSONS:

Suzbrekensal Investment, Ltd and its
General Partner, Mr. Kenneth Rogers
C/o Zeleskey Law Firm PLLC
Timothy J. Karczewski, Attorney
P. O Drawer 1728
Lufkin, Texas 75902-1728
936/623-3381
FAX 936/632-6545

FOR THE EXECUTIVE DIRECTOR:

John O. Onyenobi, P.E., Permit Coordinator
Industrial Permits Team
TCEQ Water Quality Division MC-148
P.O. Box 13087
Austin, TX 78711-3087
512/239-6707, FAX 512/239-4430

Robin Smith, Staff Attorney
TCEQ Environmental Law Division
MC-173
P.O. Box 13087
Austin, TX 78711-3087
512/239-0463 FAX 512/239-0606

FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget C. Bohac, Director
TCEQ Office of Public Assistance MC-108
P.O. Box 13807
Austin, TX 78711-3087
512/239-4085 FAX 512/239-4007

FOR PUBLIC INTEREST COUNSEL:

Blas Coy, Public Interest Counsel
TCEQ Public Interest Counsel MC-103
P.O. Box 13087
Austin, TX 78711-3087
512/239-6363 FAX 512/239-6377

FOR ALTERNATIVE DISPUTE
RESOLUTION:

Kyle Lucas
TCEQ Alternative Dispute Resolution
MC-222
P.O. Box 13087
Austin, TX 78711-3087
512/239-4010 FAX 512/239-4015

FOR THE GENERAL COUNSEL:

General Counsel
TCEQ Office of General Counsel MC-101
P.O. Box 13087
Austin, TX 78711-3087
512/239-5525 FAX 512/239-5533

FOR THE CHIEF CLERK:

LaDonna Castañuela
TCEQ Office of Chief Clerk MC-105
P.O. Box 13087
Austin, TX 78711-3087
512/239-3300 FAX 512/239-3311