

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

May 6, 2011

TO: Persons on the attached mailing list.

RE: City of Bovina
Permit No. WQ0014730001

Decision of the Executive Director.

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

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at Bovina City Hall, 205 North Street, Bovina, Texas.

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

How To Request a Contested Case Hearing.

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

The request must include the following:

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

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

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

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

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

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

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

Deadline for Submitting Requests.

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

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

Processing of Requests.

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

How to Obtain Additional Information.

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

Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/lg

Enclosure

MAILING LIST
for
City of Bovina
Permit No. WQ0014730001

FOR THE APPLICANT:

Jana Pitcock, City Manager
City of Bovina
P.O. Box 720
Bovina, Texas 79009

Lucas Johnson, EIT
OJD Engineering
2420 Lakeview Drive
Amarillo, Texas 79109

PROTESTANTS/INTERESTED
PERSONS:

Laurance Kriegel
1202 Highway 86
Bovina, Texas 79009

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Robert Brush, Staff Attorney
Texas Commission on Environmental
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Austin, Texas 78711-3087

Kent Trede, Technical Staff
Julian Centano, Jr., Technical Staff
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Water Quality Division MC-148
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FOR OFFICE OF PUBLIC ASSISTANCE
via electronic mail:

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

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental
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Public Interest Counsel MC-103
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FOR THE CHIEF CLERK
via electronic mail:

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

APPLICATION BY

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CITY OF BOVINA

BEFORE THE

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TEXAS COMMISSION ON

CHIEF CLERKS OFFICE

ENVIRONMENTAL QUALITY

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 City of Bovina's (Bovina) application for a major amendment to its Permit No. WQ0014730001 and on the ED's preliminary decision. As required by Title 30 Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk timely received comment letter from Laurence Kriegel.

This Response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

A. Description of Facility

Bovina applied to TCEQ for a major amendment to TCEQ Permit No. WQ0014730001, to authorize a reduction in biological oxygen demand (BOD₅) monitoring frequency and to clarify that the number of ponds mentioned in Special Provision 15 of the existing permit should be two. The existing permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day via surface irrigation of 63 acres of non-public access pastureland, which remains the same as in the existing permit. This permit will not authorize a discharge of pollutants into waters in the State. The existing wastewater treatment facility serves the City of Bovina. The wastewater treatment facility and disposal site are located approximately 0.75 mile northeast of the intersection of State Highway 86 and East Street, south of State Highway 86 in Parmer County, Texas. The wastewater treatment facility and disposal site are located in the drainage basin of White River Lake in Segment No. 1240 of the Brazos River Basin.

B. Procedural Background

The permit application for a major amendment to the existing permit was received on September 7, 2010 and declared administratively complete on October 25, 2010. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published on November 11, 2010 in *State Line Tribune*. The Notice of Application and

Preliminary Decision (NAPD) for a Water Quality Permit was published on January 27, 2011 in *State Line Tribune*. The public comment period ended on February 28, 2011. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

C. Access to Rules, Laws, and Records

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

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

Commission records for this facility are available for viewing and copying and are located at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of Chief Clerk). The permit application, ED's preliminary decision, and draft permit are available for viewing and copying at Bovina City Hall, 205 North Street, Bovina, Texas.

COMMENTS AND RESPONSES

COMMENT 1:

Laurence Kriegel comments that pathogens from the "Sewer" will reduce the value of the farm and houses. Mr. Kriegel also comments that pathogens grow in vehicles that he uses in driving by the "Sewer."

RESPONSE 1:

Based on the attachment to Mr. Kriegel's comments, Mr. Kriegel appears to use the term "Sewer" to mean Bovina's wastewater treatment facility. In this context, Texas Water Code Chapter 26 and applicable wastewater rules and regulations do not authorize TCEQ to consider vehicles or property values when reviewing a permit

application. Thus, property values or impacts of pathogens on vehicles are not considered in reviewing this domestic wastewater application.

COMMENT 2:

Mr. Kriegel comments that pathogens from the facility will affect his health and the health of his cattle.

RESPONSE 2:

Bacteria, which include the pathogenic species, are ubiquitous in nature. In addition, the draft permit's conditions ensure that the effluent applied on land is used by the crop and that none is leached into the groundwater or escapes as runoff to surface water. In particular, the draft permit limits the effluent application rate and does not allow irrigation during rainfall events or when the ground is frozen or saturated. Also, the draft permit requires that irrigation practices be designed and managed so as to prevent ponding of effluent or contamination of ground and surface waters; and to prevent the occurrence of nuisance conditions in the area. There are additional safeguards contained in the Special Provisions on pages 22 to 24 in the draft permit intended to prevent any health impacts to individuals and cattle.

COMMENT 3:

Mr. Kriegel claims that pathogens from the facility will affect the health of the soil and the crops produced.

RESPONSE 3:

The EPA Process Design Manual (2006) states that:

Because of their weight and size, parasite cysts and eggs will settle out in preliminary treatment or in storage ponds, so, if present most will be found in the raw sludge and possibly in the biosolids [which are disposed off site].

There is no evidence available indicating the transmission of parasitic disease from application of wastewater in properly operated land treatment systems. Transmission of parasites via sprinkler aerosols should not be a problem due to the weight of the cysts and eggs.

The reference also cites Bell and Bole (1978) who demonstrated that fecal coliform from sprinkling of treated domestic wastewater on the surfaces of alfalfa hay were killed by ten hours of bright sunlight. *See* EPA Process Design Manual - Land Treatment of Municipal Wastewater Effluents (EPA/625/R-06/016, 2006).

Soil sampling, testing and monitoring requirements are included in the draft permit to protect the chemical and biological health of the soil. For example, Special Provision No. 11 in the draft permit provides the following:

The permittee shall obtain representative soil samples from the root zones of the irrigation area. Composite sampling techniques shall be used. Subsamples shall be composited by like sampling depth and soil type for analysis and reporting. Soil types are soils that have like topsoil or plow layer textures. Soils shall be sampled individually from 0 to 6 inches, 6 to 18 inches and 18 to 30 inches below ground level. The permittee shall sample soils in December to February of each year. Analysis results shall be submitted by the end of September of each sampling year.

The permittee shall provide annual soil analyses of the irrigation area for pH [2:1 (v/v) water/soil mixture]; electrical conductivity [2:1 (v/v) water/soil mixture]; total Kjeldahl nitrogen (TKN); nitrate-nitrogen; plant-available potassium, calcium, magnesium, sulfur, and phosphorus; and sodium adsorption ratio (SAR) and its constituent parameter analysis, i.e., water-soluble sodium, calcium, magnesium (water-soluble ions expressed in mg/liter). The plant nutrient parameters shall be analyzed on a plant-available basis. Phosphorus shall be analyzed according to the Mehlich III procedure and potassium, calcium, magnesium, sodium, and sulfur may also be analyzed in the Mehlich III extract. Plant-available phosphorus, potassium, calcium, magnesium, sodium and sulfur shall be reported on a dry weight basis in mg/kg; electrical conductivity, in dS/m (mmho/cm); and pH, in standard units. Kjeldahl procedures that use methods that rely on mercury as a catalyst are not acceptable. If the SAR is 10 or greater, amendments (e.g., lime, gypsum, calcium chloride) shall be added to the soil to adjust the SAR to less than 10.

Bovina is required to submit the results of the soil sample analyses with copies of the laboratory reports to the TCEQ Regional Office (MC Region 1) and the Water Quality Compliance Monitoring Team (MC 224) of the TCEQ Enforcement Division, no later than the end of September of each sampling year. If wastewater is not applied to the land management area in a particular year, submittal of soil analysis results is not required for that year. However, Bovina is required to send notice to those same entities indicating that wastewater was not applied to the land management area during that sampling year.

COMMENT 4:

Mr. Kriegel claims that the facility is approximately 100 feet from Highway 86 and wants to know whether this meets Texas Law.

RESPONSE 4:

Neither the Texas Water Code (Chapter 26) nor TCEQ rules have separation distances between highways and land where treated domestic effluent is used for

irrigation. TCEQ rules at 30 TAC § 309.13(c) have buffer zone requirements applicable to irrigated lands, water wells and waterbodies.

COMMENT 5:

Mr. Kriegel wants to know how close the facility can be to a personal residence.

RESPONSE 5:

30 TAC § 309.13(e)(1) provides the following buffer zone requirements for treatment facilities including irrigation sites:

Lagoons with zones of anaerobic activity (e.g., facultative lagoons, un-aerated equalization basins, etc.) may not be located closer than 500 feet to the nearest property line. All other wastewater treatment plant units may not be located closer than 150 feet to the nearest property line. Land used to treat primary effluent is considered a plant unit. Buffer zones for land used to dispose of treated effluent by irrigation shall be evaluated on a case-by-case basis. The permittee must hold legal title or have other sufficient property interest to a contiguous tract of land necessary to meet the distance requirements specified in this paragraph during the time effluent is disposed by irrigation.

COMMENT 6:

Mr. Kriegel requests the name of the statute that established the TCEQ.

RESPONSE 6:

Texas agencies are periodically reviewed by the Texas Sunset Commission and have to be re-authorized by the Texas Legislature. The last authorization for the existence of TCEQ was House Bill 2912, 77th Legislature (Regular Session), 2001. The ED notes that in the current legislative session (82nd Legislature (Regular Session), 2011, House Bill 2694 and Senate Bill 657 were introduced to re-authorize the existence of TCEQ for an additional 12 year period, but neither of those bills has yet become law.

COMMENT 7:

Mr. Kriegel comments that TCEQ is using a manual called the "International Code" and that use of such a manual by TCEQ is illegal.

RESPONSE 7:

The ED is not aware of any use by TCEQ of a manual called the "International Code" and if it exists, such a manual has no controlling authority over the commission. The review of this application was based on Chapter 26 of the Texas Water Code and all applicable rules of the TCEQ.

COMMENT 8:

Mr. Kriegel comments that he is the fee simple owner of the property the city sewer is built on and has never received payment for the property.

RESPONSE 8:

The issuance of a permit does not grant Bovina the right to use private or public property for disposal or conveyance of wastewater along the discharge route. This includes property belonging to any individual, partnership, corporation or other entity. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is Bovina's responsibility to acquire the necessary property rights for the wastewater treatment plant site and to use the irrigation site associated with this draft permit.

Also, 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 actually do result in injury or adverse effects on human health or welfare, or property, or that may or actually do interfere with the normal use and enjoyment of property.

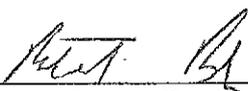
No changes to the draft permit have been made in response to public comment.

Respectfully submitted,

Texas Commission on Environmental Quality

Mark R. Vickery, P.G.
Executive Director

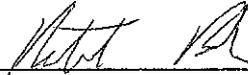
Robert Martinez, Director
Environmental Law Division

By  _____
Robert Brush, Staff Attorney
Environmental Law Division
State Bar No. 00788772
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-5600

REPRESENTING THE EXECUTIVE
DIRECTOR OF THE TEXAS COMMISSION
ON ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on May 4, 2011 the "Executive Director's Response to Public Comment" for Permit No.WQ0014730001 was filed with the Texas Commission on Environmental Quality's Office of Chief Clerk.



Robert Brush, Staff Attorney
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY