

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

December 22, 2011

TO: Persons on the attached mailing list.

RE: East Texas Electric Cooperative, Inc.
Permit No. WQ0004949000

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 the Allan Shivers Library and Museum, 302 North Charlton Street, Woodville, 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.texas.gov/about/comments.html> or by mail to the following address:

Bridget C. Bohac, 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 Public Education Program, toll free, at 1-800-687-4040.

Sincerely,



Bridget C. Bohac
Chief Clerk

BCB/lg

Enclosure

MAILING LIST
for
East Texas Electric Cooperative, Inc.
Permit No. WQ0004949000

FOR THE APPLICANT:

Edd Hargett
East Texas Electric Cooperative, Inc.
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Nacogdoches, Texas 75963

Donny Hearn
The WCM Group, Inc.
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Humble, Texas 77347

PROTESTANTS/INTERESTED
PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

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FOR PUBLIC INTEREST COUNSEL
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FOR THE CHIEF CLERK
via electronic mail:

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Office of Chief Clerk MC-105
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GREAFF, KAREN & R A
1487 CR 1020
WOODVILLE TX 75979

HARRELL, PAM
1308 COUNTY ROAD 1020
WOODVILLE TX 75979-6478

MILLER, ADRIANNA & WEBLEY, JACOB
1233 COUNTY ROAD 1020
WOODVILLE TX 75979-6422

MILLER, EDWARD
2954 INTERSTATE 45 N
HUNTSVILLE TX 77320-1078

MILLER, GRADY
1308 COUNTY ROAD 1020
WOODVILLE TX 75979-6478

MILLER, JOHN & KRISTY
1233 COUNTY ROAD 1020
WOODVILLE TX 75979-6422

TINKLE, PENNY
LOT 1
1230 COUNTY ROAD 1020
WOODVILLE TX 75979-6458

TPDES PERMIT NO. WQ0004949000

**APPLICATION BY EAST TEXAS
ELECTRIC COOPERATIVE, INC.
FOR A NEW TPDES PERMIT
NO. WQ0004949000**

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**BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Public Comment on East Texas Electric Cooperative, Inc.'s (ETEC) application for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004949000 and the ED's preliminary decision. As required by Title 30, §55.156 of the Texas Administrative Code (TAC), 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 letters from Kristy Miller (and family), R. A. and Karen Greaff, Billy and Penny Tinkle, Pam Harrell, Grady and Linda Miller, and Edward and Tammy Miller. This response addresses all such timely public comments received, whether or not withdrawn. For more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Education Program at 1-800-687-4040. General information about the TCEQ can be found on the TCEQ web site at www.tceq.texas.gov

I. BACKGROUND

A. Description of the Facility

ETEC has applied to the TCEQ for a new wastewater discharge permit to authorize the discharge of cooling tower blowdown, low volume waste sources, metal cleaning wastes, steam condensate and process area storm water from its Woodville

Renewable Power Project, a biomass-fired electric power generating facility, at a daily average flow not to exceed 0.24 million gallons per day (MGD) via Outfall 001. The source water for use in the firewater reserve, boiler, and the cooling tower will be obtained from the City of Woodville Publicly Owned Treatment Works (CW-POTW) or from an on-site groundwater supply well. The water from the CW-POTW will be reclaimed water and will be used in the cooling tower when available. Groundwater will be used for boiler makeup water, service water, and as backup water for the CW-POTW.

The plant site is located west of U.S. Highway 287, at the intersection of County Road 1020 and County Road 1030, approximately one mile south of the City of Woodville, Tyler County, Texas.

ETEC will discharge the effluent via pipeline to Turkey Creek, thence to Village Creek in Segment No. 0608 of the Neches River Basin. The unclassified receiving waters have high aquatic life use for Turkey Creek. The designated uses for Segment No. 0608 are contact recreation, high aquatic life uses, and public water supply.

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 lowering of water quality by more than a de minimis extent is expected in Turkey Creek, 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.

B. Procedural Background

The TCEQ received the application on December 23, 2010, and declared it administratively complete on February 25, 2011. The *Notice of Receipt and Intent to Obtain a Water Quality Permit* (NORI) was published in English on March 10, 2011 in the *Tyler County Booster* and in Spanish on March 18, 2011 in the *El Perico*. The ED completed the technical review of the application on July 9, 2011 and prepared a draft permit. The *Notice of Application and Preliminary Decision for a Water Quality TPDES Permit* (NAPD) was published in English on September 8, 2011 in the *Beaumont Enterprise* and in Spanish on September 16, 2011 in the *El Perico*. The public comment period ended on October 17, 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.

C. Access to Rules, Laws, and Records

- Secretary of State web site for all Texas administrative rules: www.sos.state.tx.us
- TCEQ rules in Title 30 of the TAC: www.sos.state.tx.us/tac/ (select "View the current *Texas Administrative Code*" on the right, then "Title 30 Environmental Quality")
- Texas statutes: <http://www.statutes.legis.state.tx.us/>
- TCEQ web site: www.tceq.state.tx.us (for downloadable rules in Adobe PDF format, select "Rules," then "Download TCEQ Rules")
- Federal rules in title 40 of the Code of Federal Regulations: <http://www.epa.gov/lawsregs/search/40cfr.html>
- Federal environmental laws: <http://www.epa.gov/lawsregs/laws/index.html>

Commission records for this facility are available for viewing and copying at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, First Floor (Office of the

Chief Clerk). The application for this facility has been available for viewing and copying at the Allan Shivers Library and Museum, 302 North Charlton Street, Woodville, Texas since publication of the NORI, and the draft permit and the Statement of Basis/Technical Summary and ED's Preliminary Decision have been available for viewing and copying at the same location since publication of the NAPD.

If you would like to file a complaint about the facility concerning its compliance with provisions of its permit or with TCEQ rules, you may contact the TCEQ at 1-888-777-3186 or you may contact the TCEQ Region 10 Office at 1-409-898-3838.

Citizen complaints may also be filed by sending an e-mail to complaint@tceq.texas.gov or online at the TCEQ website (select "Reporting," then "Make an Environmental Complaint"). If the facility is found to be out of compliance, it may be subject to an enforcement action.

II. COMMENTS AND RESPONSES

COMMENT 1:

Kristy Miller expressed concern that ETEC will get its water from Seneca Water Supply and Woodville. According to Ms. Miller her family gets its water from Seneca Water Supply and they cannot survive without water.

RESPONSE 1:

In the wastewater permitting process, the TCEQ is tasked by the Legislature with protecting the quality of water in the state. The evaluation of water availability is not a factor in determining whether an applicant has met all of the statutory and regulatory criteria applicable to the wastewater permit, and hence was not evaluated in the ED's review of this application.

According to the application, however, the source water for use in the firewater reserve, boiler, and the cooling tower will be from the City of Woodville Publicly Owned Treatment Works (CW POTW) or from an on-site groundwater supply well. The water from the CW POTW will be reclaimed water and will be used for the cooling tower when available. Groundwater will be used for boiler makeup, service water, and as a backup for the CW POTW. The well water will be capable of supplying water for all plant water, except potable water, when water from the CW POTW is not available.

COMMENT 2:

Kristy Miller expressed concern about the facility being built near her home. Ms. Miller stated that she is neither in a financial position to sell her home and buy property somewhere else, nor wishes to move. Ms. Miller stated that she wants to live in a stable home where she has fond memories of the past. Ms. Miller requested that the Commission deny the water/sewer permit for the ETEC chemical plant proposed to be located down the road from her home.

Similarly, Grady and Linda Miller, Billy and Penny Tinkle, Edward and Tammy Miller, and Pam Harrell expressed concern that discharges from the ETEC facility will destroy their way of life, and have an adverse affect on their family business.

RESPONSE 2:

In the wastewater permitting process, TCEQ is tasked by the Legislature with protecting the quality of the water in the state. Property values are not a factor in determining whether an applicant has met all of the statutory and regulatory criteria applicable to a wastewater discharge 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 normal use and enjoyment of animal life, vegetation, or property.

ETEC applied for an authorization to discharge wastewaters from a biomass-fired electric power generating facility. Authorization to discharge wastewaters from a chemical plant was neither requested in the permit application nor was included in the draft permit.

COMMENT 3:

Mr. R. A. Greaff and Ms. Karen Greaff asked if the wastewater discharges will be protective of the Turkey Creek.

Similarly, Grady and Linda Miller, Billy and Penny Tinkle, Edward and Tammy Miller, and Pam Harrell expressed concern that discharges from the ETEC facility will destroy the water.

RESPONSE 3:

The ED has determined that the discharges from the facility will be protective of water in the state, including Turkey Creek because: (a) the draft permit includes water quality-based effluent limitations for parameters of concern at the proposed facility to protect the quality of the receiving waters, (b) the draft permit includes technology-based limitations provided by the United States Environmental Protection Agency (EPA) for steam electric power plants in Title 40 Code of Federal Regulations (CFR) Part 423, and (c) the ED has performed Tier I and Tier II antidegradation reviews in

accordance with the rules provided in 30 TAC §307.5 and the "*Procedures to Implement the Texas Surface Water Quality Standards*," January 2003 (Implementation Procedures) for the Texas Surface Water Quality Standards (TSWQS).

The Tier I antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. The Tier II review has preliminarily determined that no lowering of water quality by more than a de minimis extent is expected in Turkey Creek.

Additionally, Other Requirement No. 13 in the draft permit requires ETEC to analyze discharges via Outfall 001 for certain analytes within 90 days of permit issuance or initial discharge, and provide the analytical results to the TCEQ. Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations or monitoring requirements in ETEC's permit.

COMMENT 4:

Mr. R. A. Greaff and Ms. Karen Greaff asked if the one-acre disposal site will have any odor.

RESPONSE 4:

The request for the land application of domestic wastewaters in the permit application has been withdrawn. Other Requirement No. 4 in the draft permit explicitly prohibits the discharge of domestic wastewaters and requires ETEC to obtain appropriate domestic wastewater treatment authorization. Since land application is not authorized, odors from land disposal are not an issue in the draft permit.

COMMENT 5:

Mr. R. A. Greaff and Ms. Karen Greaff asked if the operations at the facility will make any noise.

RESPONSE 5:

In the wastewater permitting process, TCEQ is tasked by the Legislature with protecting the quality of water in the state. Evaluation of noise is not a factor in determining whether an applicant has met all of the statutory and regulatory criteria applicable to the 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 normal use and enjoyment of animal life, vegetation, or property.

COMMENT 6:

Mr. R. A. Greaff and Ms. Karen Greaff asked if seepage or run-off from the proposed facility will impact the one-acre pond on their property that is stocked with fish.

RESPONSE 6:

Potential for seepage was not evaluated because the draft discharge permit does not authorize the land disposal of any wastewaters. As specified in *Response 4*, ETEC withdrew its request for the land application of wastewater. ETEC intends to obtain authorization for the disposal of domestic wastewater under the On-Site Sewage Facilities (OSSF) program.

As provided in the *Statement of Basis/Technical Summary and Executive Director's Preliminary Decision*, ETEC intends to seek authorization to discharge storm water from the detention pond (woodpile, dust suppression runoff and non-contact runoff) under the *TPDES Multi-Sector Industrial General Permit (MSGP) for Storm Water - TXR050000*. The MSGP establishes the terms and conditions for the disposal of storm water to ensure compliance with the rules and regulations to protect the waters in the state. Retention ponds that are authorized under the MSGP must be lined to prevent seepage. Additional information regarding the MSGP can be found at: <http://www.tceq.texas.gov/permitting/stormwater/TXR05whattodo.html>.

The draft permit authorizes the discharge of cooling tower blow down, low volume waste sources, metal cleaning wastes, steam condensate and process area storm water via Outfall 001. The discharge route for Outfall 001 is via pipeline to Turkey Creek, then to Village Creek. Discharges of waste streams at locations other than Outfall 001 are not authorized in the draft permit. Any discharges not authorized by the permit will be considered violations of the conditions in the draft permit. The first page of the draft permit explicitly states that:

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.

COMMENT 7:

Mr. R. A. Greaff and Ms. Karen Greaff asked if the facility will affect well water on their property.

RESPONSE 7:

Potential for impact on well waters offsite was not evaluated because, as specified in *Response 4*, ETEC no longer seeks authorization for land application, therefore the draft permit does not authorize the land application of wastewater. Since land disposal was not authorized in the draft permit, operations at the proposed facility are not expected to impact offsite wells.

COMMENT 8:

Mr. R. A. Greaff and Ms. Karen Greaff asked if the facility will have an effect on its surrounding environment.

RESPONSE 8:

The Executive Director has made a preliminary decision that this permit, if issued, meets all applicable statutory and regulatory requirements of the Federal Clean Water Act; Texas Water Code; the Commission rules and policies; and EPA rules .

The draft permit was developed in accordance with 30 TAC Chapter 307 and the Implementation Procedures and will be protective of aquatic life in the receiving stream when ETEC operates and maintains the facility in compliance with the draft permit. 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 lowering of water quality by more than a de minimis extent is expected in Turkey Creek, 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.

Should these conditions or other potential violations of the TPDES draft permit be observed at the facility, observers are encouraged to report an environmental complaint by calling toll-free, 1-888-777-3186 or calling the TCEQ Region 10 (Beaumont) Office at (409) 898-3838.

Based on the complaint, the regional investigators will investigate the conditions at the facility. If the regional investigator documents a violation of TCEQ regulations or conditions included in the TPDES permit, appropriate action will be taken.

COMMENT 9:

Grady and Linda Miller, Billy and Penny Tinkle, Edward and Tammy Miller, and Pam Harrell expressed concern that the ETEC operations will have an adverse affect on their livestock.

RESPONSE 9:

A guidance document provided by the Texas Agricultural Extension Service entitled *Water Quality: Its Relationship to Livestock* (Doc. No. L2374) states that the most common water quality problems affecting livestock production are high mineral concentrations (excess salinity), high nitrogen, bacterial contamination, blue-green algae (heavy growths), and petroleum, pesticide, and fertilizer spills.

The constituents of concern mentioned in Doc. No. L2374 are generally not associated with the waste streams proposed for discharge from this facility. Therefore, discharges authorized in the draft permit are not expected to adversely impact livestock.

The draft permit was developed in accordance with the TSWQS. These standards are designed to maintain the quality of water in the state and to be protective of human and environment. 30 TAC §307.4(d) states that “surface waters will not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life.”

The methodology outlined in the Implementation Procedures ensures compliance with 30 TAC Chapter 307. Specifically, the methodology is designed to ensure that no source will be allowed to discharge any wastewater which: (a) results in instream aquatic toxicity; (b) causes a violation of an applicable narrative or numerical state water quality standards; (c) results in the endangerment of a drinking water supply; or (d) results in aquatic bioaccumulation that threatens human health.

As part of the permit application process, the ED determines the uses of the receiving waters and establishes effluent limitations that are protective of those uses. The Tier I antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. The Tier II review has preliminarily determined that no lowering of water quality by more than a de minimis extent is expected in Turkey Creek.

COMMENT 10:

Grady and Linda Miller, Billy and Penny Tinkle, Edward and Tammy Miller, and Pam Harrell expressed concern that granting the permit will allow odor in the air.

RESPONSE 10:

Evaluation of odor is not a factor in determining whether an applicant has met all of the statutory and regulatory criteria applicable to an industrial wastewater permit.

To ensure that air emissions are minimized, ETEC's facility will be required to apply for and obtain a separate air quality permit from the TCEQ.

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 normal use and enjoyment of animal life, vegetation, or property.

**CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO
COMMENTS**

No changes were made to the draft permit in response to comments.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Mark R. Vickery, P.G., Executive Director

Robert Martinez, Director
Environmental Law Division

By 

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CERTIFICATE OF SERVICE

I certify that on December 21, 2011 the "Executive Director's Response to Public Comment" for Permit No. WQ0004949000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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