

Bryan W. Shaw, Ph.D., *Chairman*
Carlos Rubinstein, *Commissioner*
Toby Baker, *Commissioner*
Zak Covar, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

February 19, 2013

TO: Persons on the attached mailing list.

RE: Chappell Hill Service Company, LLC
Permit No. WQ0015031001

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 Nancy Carol Roberts Memorial Library, 100 West Martin Luther King, Jr. Parkway, Brenham, 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/ka

Enclosure

MAILING LIST
for
Chappell Hill Service Company, LLC
Permit No. WQ0015031001

FOR THE APPLICANT:

S. J. Gaido, III
4201 Running River Lane
Washington, Texas 77880

Steve Barry, P.E.
Jones & Carter, Inc.
8701 New Trails Drive, Suite 200
The Woodlands, Texas 77381

PROTESTANTS/INTERESTED
PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR
via electronic mail:

Brian Christian, Director
Texas Commission on Environmental
Quality
Small Business and Environmental
Assistance
Public Education Program MC-108
P.O. Box 13087
Austin, Texas 78711-3087

Kathy J. Humphreys, Staff Attorney
Texas Commission on Environmental
Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Kellie Crouch-Elliott, Technical Staff
Texas Commission on Environmental
Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL
via electronic mail:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental
Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK
via electronic mail:

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

ANDREWS , BILL
STE 800
3900 ESSEX LN
HOUSTON TX 77027-5133

BAEHREJ , AXEL
10861 OLD CHAPPELL HILL RD
CHAPPELL HILL TX 77426-6270

BUSKE , LARY
4922 MAIN ST
CHAPPELL HILL TX 77426-6038

CEGIELSKI , MARK
5159 CHURCH ST
CHAPPELL HILL TX 77426-6317

CLOUGH , ROBERT M
4600 MAIN ST
CHAPPELL HILL TX 77426-6040

DABERA , RAYMOND
PO BOX 214
CHAPPELL HILL TX 77426-0214

DAVIS , BOB
6070 GIBBS CREEK RD
CHAPPELL HILL TX 77426-5166

GAINES , SALLY
3909 KATIE LN
CHAPPELL HILL TX 77426-6167

GUNN , JOHN & KAREN
PO BOX 173
CHAPPELL HILL TX 77426-0173

HOLTON , MELANIE
9000 HIGHWAY 290 E
CHAPPELL HILL TX 77426-6006

HOLY , MAUREEN & THOMAS
4069 COTTONWOOD RD
WEST TX 76691-1804

HOLY , MRS MAUREEN O'HARE
4069 COTTONWOOD RD
WEST TX 76691-1804

HUESKE , LUTHER
WASHINGTON COUNTY
STE 104
100 E MAIN ST
BRENHAM TX 77833-3700

IMM , ROGER
PO BOX 430
CHAPPELL HILL TX 77426-0430

JACKSON , JUDY E
8600 FM 2447 E
CHAPPELL HILL TX 77426-6188

LANCASTE , DAVID S
1350 COPELYN SPRINGS RD
BRENHAM TX 77833-7294

LANCASTER , DAVID
9500 SPENCER LN
CHAPPELL HILL TX 77426-6400

LANCASTER , DAVID S
1350 COPELYN SPRINGS RD
BRENHAM TX 77833-7294

LANCASTER , ELIZABETH
9500 SPENCER LN
CHAPPELL HILL TX 77426-6400

LEHMAN , DOREEN
7000 KURT DR
BRENHAM TX 77833-7114

LYON , HILARY
9090 PROVIDENCE ST
CHAPPELL HILL TX 77426-6300

MARZAHN , MARK
STE 100
105 W MAIN ST
BRENHAM TX 77833-3693

MELESKI , VIVIAN
PO BOX 405
CHAPPELL HILL TX 77426-0405

MIDDLEBROOKS , MARY TOM
PO BOX 1
CHAPPELL HILL TX 77426-0001

NASH , ROBERT
10576 OLD CHAPPELL HILL RD
CHAPPELL HILL TX 77426-6204

PARKER , DAN & RETTA
4699 KRUEGER RD
WASHINGTON TX 77880-6251

RAMEX , BOBBY & DALE
PO BOX 504
CHAPPELL HILL TX 77426-0504

RAY , ALEJANDRA
5162 MAIN ST
CHAPPELL HILL TX 77426-6246

RIGNEY , ROBERT
5531 SUGAR HILL DR
HOUSTON TX 77056-2031

SCHULZE , JANET M
801 BILSKI LN
BRENHAM TX 77833-8289

SMITH , DAVID
PO BOX 55
CHAPPELL HILL TX 77426-0055

SMITH , EDWARD A
DRAWER C
5060 MAIN ST
CHAPPELL HILL TX 77426-6237

SNELL , LAURA
3718 CHEVY CHASE DR
HOUSTON TX 77019-3012

SNELL , LAURA & MARK
3718 CHEVY CHASE DR
HOUSTON TX 77019-3012

STEVENS , THOMAS G
7301 HIGHWAY 290 E
CHAPPELL HILL TX 77426-6275

STOGDILL , ROBERT E
PO BOX 160
CHAPPELL HILL TX 77426-0160

STRIEGLER , JOHN
PO BOX 352
CHAPPELL HILL TX 77426-0352

VARA , CONNIE & JOE
PO BOX 205
CHAPPELL HILL TX 77426-0205

WATSON , ANN & JOHN
PO BOX 238
CHAPPELL HILL TX 77426-0238

WHITMIRE , THE HONORABLE JOHN
THE TEXAS SENATE
PO BOX 7271
HOUSTON TX 77248-7271

WHITMIRE , THE HONORABLE JOHN SENATOR
THE SENATE OF THE STATE OF TEXAS
PO BOX 12068
AUSTIN TX 78711-2068

WYATT , DARLENE & DAVID
4847 SANDY LN
CHAPPELL HILL TX 77426-6297

WYATT , O DAVID
O DAVID WYATT PROPERTIES LLC
4847 SANDY LN
CHAPPELL HILL TX 77426-6297

YATES , TOM
6401 TRACKSIDE RD
CHAPPELL HILL TX 77426-5427

YOUNG , BILL
PO BOX 252
CHAPPELL HILL TX 77426-0252

TCEQ PERMIT NO. WQ0015031001

APPLICATION BY	§	BEFORE THE
	§	
CHAPPELL HILL SERVICE	§	TEXAS COMMISSION ON
	§	
COMPANY, LLC	§	ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the Executive Director's preliminary decision to approve Chappell Hill Service Company, LLC's (CHSC) application for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015031001. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk received timely comment letters or formal comments at the public meeting from Mark Cegielski, Bob Davis, Thomas and Maureen Holy, Roger Imm, David Lancaster, Elizabeth Lancaster, Hillary Lyon, Vivian Meleski, Alejandra Ray, Janet Schultze, David Smith, Edward Smith, Laura Snell, David Wyatt, and Tom Yates. This

response addresses all such timely public comments received, whether or not withdrawn. Additionally, Senator John Whitmire requested a Public Meeting.

Access to Rules, Laws, and Records

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

- Secretary of State website: www.sos.state.tx.us;
- TCEQ rules in Title 30 of the Texas Administrative Code:
www.sos.state.tx.us/tac/;
- Texas statutes: <http://www.statutes.legis.state.tx.us/>;
- 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”);
- Federal environmental laws and rules: 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, Executive Director’s preliminary decision, and draft permit are available for viewing and copying at the Nancy Carol Roberts Memorial Library, 100 West Martin Luther King, Jr. Parkway, Brenham, Texas.

If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Participation and Education

Program at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

CHSC applied to the TCEQ for a new permit that would authorize it to discharge treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per day. If the draft permit is issued, the wastewater treatment plant (WWTP) will serve The Village, a mixed commercial and residential development near Chappell Hill, Texas.

If the draft permit is issued, the treated effluent will be discharged to an unnamed tributary; then to Little Cedar Creek; then to New Year Creek; then to the Brazos River Below Navasota River in Segment No. 1202 of the Brazos River Basin. The unclassified receiving water uses are minimal aquatic life use for the unnamed tributary and high aquatic life use for Little Cedar Creek. The designated uses for Segment No. 1202 are high aquatic life use, public water supply, and primary contact recreation. If the draft permit is issued, the facility will be located approximately 0.25 mile north and 0.35 mile east of the intersection of Farm-to-Market Road 1155 and Highway 290 in Washington County, Texas 77426.

Procedural Background

The TCEQ received CHSC's application for a new TPDES permit on February 6, 2012 and declared it administratively complete on February 29, 2012. The Notice of

Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in the *Brenham Banner-Press* on March 2, 2012. The Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit was published in the *Brenham Banner-Press* on July 6, 2012. The Notice of Public Meeting was published in the *Brenham Banner-Press* on November 1, 2012. A public meeting was held at the Chappell Hill Volunteer Fire Department on December 11, 2012 and the comment period ended immediately after the meeting. 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.

COMMENTS AND RESPONSES

COMMENT 1:

Mark Cegielski, Thomas and Maureen Holy, David Lancaster, and Laura Snell expressed concern that wastewater would flow across their properties. Mr. Lancaster asked about whether the applicant has a right to use the proposed discharge route without landowner permission and how his property rights are affected.

RESPONSE 1:

CHSC has applied for authorization to discharge wastewater under the Texas Pollutant Discharge Elimination System (TPDES). TPDES permits establish terms and conditions that are intended to provide water quality pollution control, as directed by federal law, state law, and the Texas Administrative Code (TAC). Specifically, the CHSC draft permit provides:

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.¹

The draft permit also provides that it is the permittee's responsibility to acquire property rights as may be necessary to use the discharge route.²

The Texas Water Code provides that the TCEQ is the agency primarily responsible for "implementing the constitution and laws for this state relating to the conservation of natural resources and the protection of the environment."³ The TWC prohibits the discharge of waste or pollution into or adjacent to water in the state without authorization from the Commission.⁴ To implement this policy the TCEQ was given the authority to issue TPDES permits for the discharge of waste or pollution into or adjacent to water in the state.⁵ Historically, Texas courts have held that water in a watercourse is the property of the State, held in trust for the public.⁶ Accordingly, the TCEQ is authorized to permit the discharge of treated domestic wastewater into water in the state.

¹ CHSC draft permit, page 1. *See also*, 30 TAC § 305.122(b) and (c).

² CHSC draft permit, page 1. *See also*, 30 TAC § 305.122(b) and (c).

³ TWC § 5.012.

⁴ TWC § 26.121.

⁵ TWC § 26.027.

⁶ *Goldmith & Powell v State*, 159 S.W. 2d 534, 535 (Tex.Civ.App.-Dallas 1942).

The Court of Appeals considered whether the flow treated wastewater from a city's wastewater treatment facility caused a taking of or damage to downstream landowners' property in *Domel v City of Georgetown*.⁷ In *Domel*, downstream landowners (Ethel and Norman Domel) sued the City of Georgetown, alleging that the value of their property was diminished by the City's discharge of treated wastewater into an intermittent stream that crossed their land. The question before the court was whether the City of Georgetown needed permission from downstream landowners in order to discharging treated wastewater into a watercourse on privately-owned land pursuant to a state-issued permit.⁸

The Court held that “[the State] does not need title to use the bed and banks of a watercourse for the purpose of transporting water. . .,” and that “the State has the right to use the channel of the watercourse to meet its constitutionally mandated duty to conserve and develop the State’s water resources.”⁹ Finally, the court considered the language that is on the first page of every TPDES permit (quoted above), and determined that the City did not need additional authority to use the watercourse for the discharge of treated domestic wastewater.¹⁰

Because the State is authorized to use the bed and banks to transport water, and the TCEQ has authority to authorize a discharge of treated domestic wastewater into water in the state through a TPDES permit, the applicant for a TPDES permit does not

⁷ *Domel v. City of Georgetown*, 6 S.W.3d, 349, 358 (Tex. App.-Austin 1999).

⁸ *Domel v. City of Georgetown*, 6. S.W. 3d 349, 350 (Tex. App.-Austin 1999).

⁹ *Domel v. City of Georgetown*, 6. S.W. 3d 349, 358 (Tex. App.-Austin 1999).

¹⁰ *Domel v. City of Georgetown*, 6 S.W. 3d 349, 361 (Tex. App.-Austin 1999).

need permission from downstream landowners to use the watercourse running through their property.

COMMENT 2:

Mark Cegielski and Laura Snell expressed concern that, because the developer offered sewer service to everyone living in Chappell Hill, the water course running through their properties will receive the majority of the town's human waste.

RESPONSE 2:

The draft permit for CHSC authorizes the discharge of treated domestic wastewater at no more than 400,000 gallons per day. Because it is unlawful to discharge untreated wastewater into watercourses, CHSC will be required to treat its wastewater to the standards required by the Texas Water Code, TCEQ's rules, and the permit prior to discharge. The draft permit does not define the area that the WWTP would serve; however, the developer must obtain a Certificate of Convenience and Necessity (CCN) before it can provide sewer service. The CCN will delineate the WWTP's service area.

COMMENT 3:

Mark Cegielski stated that the flow of wastewater will make portions of his land inaccessible, rendering part of the land unusable for livestock grazing and hay production. He also asked who will be responsible for retrieving his cattle if they get bogged down.

Similarly, Mark Cegielski asserted that the low spot in his pasture is not a tributary of any body of water and Laura Snell asserts that the low spot in her pasture was never intended to carry the amount of flow proposed in the application.

RESPONSE 3:

CHSC indicated that the discharge route would be to an unnamed tributary; then to Little Cedar Creek; then to New Year Creek; then to the Brazos River. The discharge route was verified during the technical review of the application, and according to available information, the discharge will be to an intermittently flowing tributary of Little Cedar Creek.

The Executive Director reviewed the USGS topographic map (which shows key land features such as streams and their tributaries) and aerial photographs during his review. Both the USGS topographic map and the aerial photographs indicated that the discharge would be to a defined tributary.

The TPDES permitting process does not address issues unrelated to water quality, except for a few specific issues required by statute or rule. Any concerns regarding the responsibility of retrieving the cattle should be addressed with CHSC should operation of the facility contribute to the cattle being “bogged down.”

COMMENT 4:

Mark Cegielski, Thomas and Maureen Holy, David Lancaster, and Laura Snell expressed concern that the wastewater will not be safe for people, livestock, and pets.

David Lancaster also asked about the effects of the wastewater on plants. Laura Snell expressed concern about pets ingesting chemicals.

RESPONSE 4:

The requirements in the draft permit were established to be protective of human health and the environment if CHSC operates and maintains the facility according to TCEQ rules and the requirements in the draft permit. As part of the application review process, TCEQ determines the uses of the receiving water and sets effluent limits that are protective of those uses. In this case, the uses for the Segment 1202 include primary contact recreation, public water supply, and high aquatic life use.¹¹

The Water Quality Division has determined that the draft permit complies with the Texas Surface Water Quality Standards (TSWQS). The TSWQS ensure that effluent discharges are protective of aquatic life, human health, and the environment. Additionally, the draft permit requires disinfection of the treated effluent before discharge. The effluent must be chlorinated in a chlorine contact chamber to a chlorine residual of 1.0 mg/l with a minimum detention time of 20 minutes.¹² The chlorine residual must be monitored five times per week by grab sample according to the proposed draft permit requirements.¹³ Moreover, to ensure that the effluent is properly disinfected, the draft permit contains effluent limits for bacteria.¹⁴

¹¹ See, Interoffice Memo from Standards Implementation Team to Municipal Permits Team, dated 3/16/12.

¹² CHSC draft permit, pages 2 and 2a.

¹³ CHSC draft permit, pages 2 and 2a.

¹⁴ CHSC draft permit, pages 2 and 2a.

COMMENT 5:

Mark Cegielski, Thomas and Maureen Holy, David Lancaster, and Laura Snell expressed concern about the combined effects of stormwater and additional wastewater on flooding. David Lancaster asked what due diligence was performed to determine the effects of the discharge on the water level of the tributary during both dry conditions and flooding conditions.

RESPONSE 5:

TPDES permits establish terms and conditions that are intended to provide water quality pollution control, therefore, the TCEQ's review of an application for a TPDES permit focuses on controlling the discharge of pollutants into water in the state. The TCEQ does not have jurisdiction to address flooding in the wastewater permitting process, unless there is an associated water quality concern. CHSC's draft permit includes effluent limits and other requirements that it must meet even during rainfall events and periods of flooding. The draft permit would require CHSC to provide protection for the facility from a 100-year flood.¹⁵ Additionally, the draft permit does not authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations.¹⁶

Additionally, the Federal Emergency Management Agency (FEMA) has programs that are designed to mitigate damage caused by flooding. You can contact your local floodplain administrator if you have additional flooding concerns.

¹⁵ CHSC draft permit, page 31, other requirement 4.

¹⁶ CHSC draft permit, page 1.

The Executive Director reviewed the USGS topographic map (which shows key land features such as streams and their tributaries) and aerial photographs during his review. Both the USGS topographic map and the aerial photographs indicated that the discharge would be to a defined tributary. Therefore, a permitted flow of 400,000 gallons per day is not expected to flood the intermittent unnamed tributary of Little Cedar Creek.

COMMENT 6:

Mark Cegielski, David Lancaster, and Laura Snell expressed concern about the proximity of the proposed facility to their properties and asserted that the facility will cause nuisance conditions including: odor, noise, light pollution, mosquitoes, and undesirable aesthetics.

RESPONSE 6:

TCEQ rules require that domestic wastewater treatment facilities meet buffer zone requirements for the abatement and control of nuisance odor.¹⁷ The applicable buffer zone distance for the proposed facility is 150 feet from any treatment unit to the nearest property line.¹⁸ According to the application, no treatment units will be built closer than 150 feet to the nearest existing property line.¹⁹ Nuisance odor is not expected to occur as a result of the permitted activities at the facility if the permittee operates the

¹⁷ 30 TAC § 309.13(e).

¹⁸ 30 TAC §309.13(e)(1).

¹⁹ CHSC application, attachment C.

facility in compliance with TCEQ's rules and the terms and conditions of the draft permit.

Additionally, TPDES permits establish terms and conditions that are intended to provide water quality pollution control, as directed by federal law, state law, and TCEQ's rules. The TCEQ's jurisdiction in a wastewater permit application is limited to the issues set out in the TWC, TCEQ's rules, and all applicable federal regulations; therefore, noise, light pollution, and mosquitoes are not considered in the TCEQ's review. The draft permit, however, does not affect or limit the ability of a landowner to seek relief from a court in response to activities that interfere with the landowner's use and enjoyment of property.

Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with the terms of any permit or other environmental regulation by contacting the Waco Regional Office at 254-751-0335, or by calling the 24-hour toll-free Environmental Complaints Hotline at 1-888-777-3186. The TCEQ investigates all complaints received. If the facility is found to be out of compliance with the terms and conditions of its permit, it may be subject to an enforcement action.

COMMENT 7:

Mark Cegielski, Thomas and Maureen Holy, David Lancaster, and Laura Snell expressed concern that the facility will negatively impact their property values and enjoyment of their property. David Lancaster asked about the effects of the discharge on his property tax assessment.

RESPONSE 7:

The TCEQ does not have jurisdiction to review the effect, if any, the location or discharge route might have on property values and tax assessments of surrounding landowners in reviewing a domestic wastewater discharge permit application.

COMMENT 8:

Mark Cegielski and Laura Snell stated that there are alternative solutions for handling wastewater from the proposed development that would not negatively impact them. Thomas and Maureen Holy stated that they would prefer to have a tertiary process to treat the wastewater.

Similarly, Edward Smith asked if the effluent could be rerouted or encased. Mark Cegielski, David Lancaster, and Elizabeth Lancaster asked why the effluent was not being rerouted to discharge along the developer's property instead of along their property and assert that the effluent could be rerouted.

RESPONSE 8:

The TCEQ does not mandate a specific treatment process, and the owner of a facility "is not required to submit collection system or treatment facility plans and specifications for approval prior to the commission issuing the facility's wastewater permit."²⁰ Regardless of the treatment process used, the permittee must meet the effluent limits in its permit.

²⁰ 30 TAC § 217.6(a).

CHSC's draft permit requires secondary treatment²¹ in the interim phase and enhanced secondary treatment with nitrification²² in the final phase. Secondary treatment involves the removal of suspended solids and dissolved biodegradable organic matter, usually by conversion of the waste into biomass and physical removal of the biomass before discharge. Secondary treatment typically removes more than 90% of the biochemical oxygen demand (5-day) and total suspended solids. Enhanced secondary treatment removes additional biochemical oxygen demand (5-day) and converts nitrogen compounds to forms that demand less oxygen in the stream. Tertiary treatment typically involves filtration of residual suspended solids, and may involve removal of residual dissolved solids, nutrients, or other specific compounds.

As mentioned above, secondary treatment is required in the interim phase of CHSC's draft permit.²³ In the interim phase of CHSC's draft permit the daily average effluent limits are:²⁴

- Biochemical Oxygen Demand – 20 mg/l²⁵
- Total Suspended Solids – 20 mg/l
- *E. coli* – 126 CFU²⁶ or MPN²⁷
- Effluent Dissolved Oxygen – 2 mg/l (minimum)

²¹ 30 TAC § 309.1(b).

²² See 30 TAC § 309.3(b)(1) and 30 TAC § 309.4.

²³ 30 TAC § 309.1(b).

²⁴ CHSC draft permit, page 2.

²⁵ milligrams per liter.

²⁶ colony forming units.

²⁷ most probable number.

- pH – 6-9 standard units

As part of the evaluation of the application, the Executive Director performed an anti-degradation review of the receiving waters in accordance with TCEQ rules²⁸ and the Procedures to Implement the Texas Surface Water Quality Standards (January 2003). A Tier 1 anti-degradation 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 Little Cedar Creek, which has been identified as having a high aquatic life use. Existing uses will be maintained and protected. In addition, a dissolved oxygen modeling analysis was performed to evaluate the predicted potential impact of the proposed discharge on dissolved oxygen levels in the water bodies along the discharge route. Model results indicated that dissolved oxygen levels are predicted to be maintained above their assigned criteria at the proposed interim phase flow and treatment level. Based on these reviews, the Executive Director has determined that the secondary treatment effluent set in the draft permit will be protective of aquatic life, human health, the uses of the receiving waters and the environment. The preliminary determination can be reexamined and may be modified if new information is received.

²⁸ 30 TAC § 307.5.

Additionally, after pre-application discussions with the water quality modeler, CHSC requested more restrictive effluent limits in the final phase, which the Executive Director included. The effluent limits in the final phase of CHSC's draft permit are:²⁹

- Carbonaceous Biochemical Oxygen Demand – 10 mg/l
- Total Suspended Solids – 15 mg/l
- Ammonia Nitrogen – 3 mg/l
- *E. coli* – 126 CFU or MPN
- Effluent Dissolved Oxygen – 4 mg/l (minimum)
- pH – 6-9 standard units

Dissolved oxygen modeling analysis results indicated that dissolved oxygen levels in the receiving waters are predicted to be maintained above their assigned criteria at the proposed final phase flow and treatment level. The TCEQ has determined that enhanced secondary treatment with nitrification is adequate and the discharge will meet applicable water quality criteria following incorporation of enhanced secondary treatment with nitrification.³⁰

CHSC's draft permit requires a licensed professional engineer to certify or demonstrate that the final engineering design meets the requirements in TCEQ's rules and to obtain TCEQ approval prior to construction of each phase.³¹ In addition, a

²⁹ CHSC draft permit, page 2a.

³⁰ 30 TAC § 309.3(a)(1).

³¹ CHSC, draft permit, Other Requirements, Number 7, *See also* 30 TAC § 217.10.

licensed professional engineer must certify that the wastewater treatment facility was constructed according to the approved plans and specifications.³²

Additionally, TCEQ does not have authority to mandate a different outfall location or a different discharge route, if the applicant's proposed location and discharge route comply with the TWC and TCEQ's rules. If CHSC updates its application with a different outfall location or a different discharge route, the Executive Director will reevaluate the discharge route to make sure that the draft permit contains appropriate limits and conditions for the revised discharge location or route. Similarly, if CHSC decides to enclose (pipe) its effluent downstream and discharge at a different location, the Executive Director must reevaluate the discharge route to ensure the effluent limits in the draft permit still comply with TCEQ's rules. Additionally, new landowners may need to be notified of a change of the outfall location or the discharge route.

COMMENT 9:

Thomas and Maureen Holy, Roger Imm, David Lancaster, Elizabeth Lancaster, and Laura Snell expressed concern that ownership of the proposed facility will change. David Lancaster asked if he will be notified about ownership changes and stated that new owners must adhere to the same rules and requirements.

RESPONSE 9:

A change in facility ownership requires transfer of the permit. Any new owner must comply with all of the terms and conditions contained in the transferred permit.

³² 30 TAC §217.14.

The new owner must also comply with all the statutes, rules and other requirements applicable to the facility. To transfer a permit to a new owner, the permittee must submit an application at least 30 days prior to the ownership change.³³ The transfer application requires information from both the current owner and new owner of the facility. If a transfer application is submitted, the Executive Director will review the application and transfer the permit if the application is administratively complete.

TCEQ rules do not require notice to the public for an ownership transfer. TCEQ may refuse to approve a transfer if the conditions of a judicial decree, compliance agreement or enforcement order have not been met.³⁴ TCEQ also considers the prior compliance record of the transferee, if any.³⁵ The wastewater treatment facility can be transferred separately from the property in the development.

COMMENT 10:

Mark Cegielski, Thomas and Maureen Holy, and David Lancaster expressed concern about the maintenance of the proposed facility and asked who would be responsible for fixing the facility. Mark Cegielski noted that the system is mechanical and mechanical systems can fail.

RESPONSE 10:

If the draft permit is issued, CHSC will be responsible for maintaining the facility. The draft permit contains several safeguards that reduce the risk of system failure. For

³³30 TAC §305.64.

³⁴ 30 TAC § 305.64(f).

³⁵ 30 TAC § 305.64(f).

example, TPDES permits are issued for no more than five years and the facility's compliance history is evaluated whenever the permittee applies for renewal or major amendment to its permit. If necessary, the TCEQ can amend, suspend, or revoke the permit.

To help ensure that WWTPs are properly maintained, TCEQ rules and the draft permit require permittees to employ a licensed wastewater operator and specify a minimum license level based on the type of treatment and permitted daily average flow.³⁶ An operator with the required level of license or higher must be present at the facility five days per week and available by phone or pager seven days per week. Because the daily average flow in the final phase of the draft permit is 400,000 gallons per day from a WWTP that will use an activated sludge treatment process, the CHSC WWTP must be operated by an operator with a Category C or higher license.³⁷

Additionally, the draft permit requires CHSC to, among other things:

- calibrate flow measuring devices as often as necessary, but no less than once per year, to ensure accuracy;³⁸
- ensure that the facility and all its systems of collection, treatment, and disposal are properly maintained;³⁹

³⁶ CHSC draft permit, Operational Requirements, Item 9 and Other Requirements, Item 1; *See also*, 30 TAC § 30.350

³⁷ CHSC draft permit, page 31, Other Requirements 1.

³⁸ CHSC draft permit, Monitoring and Reporting Requirements, Item 4.

³⁹ CHSC draft permit, Operational Requirements, Item 1; *see also*, 30 TAC § 305.125(4).

- submit a closure plan for review before closing the facility;⁴⁰
- install and maintain safeguards to prevent discharge of inadequately treated wastewater during a power failure;⁴¹
- notify the TCEQ of any noncompliance with its permit;⁴²
- obtain authorization from the TCEQ before making any changes to the facility that may result in noncompliance;⁴³
- properly operate and maintain the facility;⁴⁴
- prevent discharge of inadequately treated wastewater during power failures;⁴⁵
- protect the facility from a 100-year flood;⁴⁶ and

Additionally, the engineering design of the facility must be approved by the TCEQ and the facility design will need to meet applicable requirements for alarms, emergency backup operation, and redundancy. ⁴⁷

Moreover, the TCEQ can pursue enforcement against the permittee if the permittee fails to meet the permit conditions.⁴⁸

⁴⁰ CHSC draft permit, Operational Requirements, Item 3.b; *see also*, 30 TAC §§ 305.42 and 305.43.

⁴¹ CHSC draft permit, Operational Requirements, Item 4; *see also*, 30 TAC §§ 217.63(g) and 217.37

⁴² 30 TAC § 305.125(9).

⁴³ CHSC draft permit, Permit Conditions, Item 2.a; *see also*, 30 TAC § 305.125(8).

⁴⁴ CHSC draft permit, Operational Requirements, Item 1; *see also*, 30 TAC § 305.125(5).

⁴⁵ CHSC draft permit, Operational Requirements, Item 4; *see also*, 30 TAC § 217.37.

⁴⁶ CHSC draft permit, Other Requirements, Item 4; *see also*, 30 TAC § 309.13

⁴⁷ CHSC draft permit, Operational Requirements, Item 8(b) and Other Requirements, Item 7; Operational Requirements, Item 9 and Other Requirements, Item 1; *see also*, 30 TAC Chapter 217.

⁴⁸ 30 TAC § 305.125(1)

COMMENT 11:

Thomas and Maureen Holy and David Lancaster expressed concern about spills and the release of untreated wastewater during heavy rains.

RESPONSE 11:

The design criteria for wastewater treatment systems in TCEQ's rules specify requirements for minimum freeboard. Freeboard is the additional storage depth generally used to contain added flow from rainfall. According to the design criteria, the system must provide 18 inches of freeboard in the aeration basins and 12 inches of freeboard in the clarifiers at four times the permitted average daily flow.⁴⁹

In addition, among other things, the draft permit:

- prohibits unauthorized discharge of wastewater or any other waste;⁵⁰
- requires the permittee to take action to prevent a potentially harmful discharge;⁵¹
- requires the permittee to notify the TCEQ of any unauthorized discharge;⁵² and
- requires the permittee to prevent discharge of inadequately treated wastewater during power failures.⁵³

COMMENT 12:

Thomas and Maureen Holy and Elizabeth Lancaster expressed concern that CHSC will profit at the expense of their interests.

⁴⁹ 30 TAC § 217.153(b).

⁵⁰ CHSC draft permit, Permit Conditions, Item 2(g); *see also*, TWC § 26.121.

⁵¹ CHSC draft permit, Permit Conditions, Item 2(b)); *see also*, 30 TAC § 305.125(1).

⁵² CHSC draft permit, Monitoring and Reporting Requirements, Item 7(b)(i), *see also*, 30 TAC § 305.125(9).

⁵³ CHSC draft permit, Operational Requirements, Item 4; *see also*, 30 TAC § 217.37.

RESPONSE 12:

The TCEQ may not prohibit an applicant from receiving authorization if it complies with all statutory and regulatory requirements. Further, the TCEQ does not consider a company's profit motive in determining whether a wastewater discharge permit should be issued.

COMMENT 13:

David Lancaster asked about the effects of the facility on the Chappell Hill Water Supply Corporation's wells.

RESPONSE 13:

The Water Quality Division has determined that the draft permit complies with the Texas Surface Water Quality Standards (TSWQS). The TSWQS ensure that effluent discharges are protective of aquatic life, human health and the environment. The review process for surface water quality is conducted by the Standards Implementation Team and Water Quality Assessment Team. According to the *Texas Groundwater Protection Strategy*, AS-188, if the surface water quality is protected, then the groundwater quality in the vicinity will not be impacted by the discharge.

According to CHSC's application, the proposed facility will comply with TCEQ's siting requirements.⁵⁴ The siting requirements do not allow wastewater treatment plant units to be located in a 100-year floodplain, in wetlands, or within certain distances of drinking water sources. The siting requirements also prohibit unprotected wastewater

⁵⁴ The siting requirements are found at 30 TAC § 309.13(a)-(d).

surface impoundments over the recharge zones of aquifers. Accordingly, a wastewater treatment plant unit must be located a minimum horizontal distance of 500 feet from public water wells, springs, and similar sources of public drinking water. The minimum distance of 500 feet also applies to above-ground drinking water storage tanks and surface water treatment plants.

In addition, the draft permit requires disinfection of the treated effluent before discharge.⁵⁵ Chlorination of the treated effluent is required to provide adequate disinfection and reduce pathogenic organisms. CHSC's draft permit requires that its effluent be chlorinated in a chlorine contact chamber to a chlorine residual of 1.0 mg/l with a minimum detention time of 20 minutes. According to the draft permit requirements, the chlorine residual must be monitored five times per week by grab sample.⁵⁶ The draft permit contains effluent limits for bacteria, using *E. coli* as the bacterial indicator organism.⁵⁷

COMMENT 14:

David Lancaster asked how the water quality is monitored and who receives the monitoring and violation reports.

RESPONSE 14:

If the draft permit is issued, CHSC will be required to analyze its treated effluent prior to discharge and to provide monthly reports to the TCEQ Enforcement Division

⁵⁵ CHSC draft permit, pages 2 and 2a.

⁵⁶ CHSC draft permit, pages 2 and 2a.

⁵⁷ CHSC draft permit, pages 2 and 2a.

that include the results of the analyses. These reports are public records and are accessible online using the Environmental Protection Agency's Enforcement and Compliance History Online database, which may be found at:

http://www.epa-echo.gov/echo/compliance_report_water.html.

CHSC may collect and analyze the effluent samples itself, or it may contract with a third party for sample collection, sample analysis, or both. However, all samples must be collected and analyzed according to TCEQ's rules.⁵⁸ Additionally, the samples must be analyzed by an accredited environmental laboratory.⁵⁹

If the draft permit is issued, CHSC will be required to notify the TCEQ if its effluent does not meet the permit limits according to the requirements in the permit.⁶⁰ In addition, the TCEQ regional staff may sample the effluent during routine inspections or in response to a complaint. Furthermore, the draft permit states that CHSC has a duty to comply with all conditions of the permit and that violation of the permit is grounds for enforcement action.⁶¹

Information regarding complaints, investigations, notices of violation, enforcement, and other incidents is made available on the TCEQ's website at <http://www12.tceq.state.tx.us/crpub/index.cfm?fuseaction=addnid.IdSearch>.

⁵⁸ 30 TAC Chapter 319, Subchapter A, *Monitoring and Reporting System*

⁵⁹ TWC § 5.134.

⁶⁰ 30 TAC § 305.125(9)(B)(ii)

⁶¹ CHSC draft permit, page 9, Permit Conditions 2.b.

COMMENT 15:

Edward Smith asked how long the applicant must wait to reapply if the permit is denied.

RESPONSE 15:

TCEQ rules do not establish how long an entity must wait before reapplying for a TPDES permit. However, the entity would need to address all of the issues that caused denial of the original application.

COMMENT 16:

Edward Smith and David Lancaster asked what would happen if the project fails or is abandoned.

RESPONSE 16:

If the WWTP is built and the project fails or is abandoned, but there is a need for the WWTP, the TCEQ can appoint a person to temporarily operate or manage the facility.⁶²

COMMENT 17:

Elizabeth Lancaster stated that they were not notified about the facility.

RESPONSE 17:

TCEQ's rules provide that notice must be provided by publication and by mail. The applicant is required to publish two notices. The first notice, the Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI), must be published no later than

⁶² 30 TAC §291.142.

30 days after the executive director deems an application administratively complete.⁶³ CHSC published the NORI in the *Brenham Banner-Press* on March 2, 2012.

The second notice, Notice of Application and Preliminary Decision (NAPD) for a Water Quality Permit, must be published after the chief clerk has mailed the preliminary decision to the applicant.⁶⁴ CHSC published the NAPD in the *Brenham Banner-Press* on July 6, 2012.

Additionally, applicants for new permits must provide a list of adjacent landowners and downstream landowners along the discharge route within one mile from the point of discharge; and a map showing the location of these landowners. The TCEQ mails NORI and NAPD to the adjacent and downstream landowners on the mailing list. According to the mailing list of adjacent and downstream landowners provided by CHSC in its application, notice was mailed to David and Elizabeth Lancaster on Copelyn Springs Road.

COMMENT 18:

Bob David, Roger Imm, and Hillary Lyon stated that the affected landowners should be compensated or, alternatively, the effects of the facility on the affected landowners should be mitigated.

RESPONSE 18:

The TCEQ cannot require compensation of affected landowners or mitigation beyond what is required by the TWC or TCEQ's rules. However, the scope of the TCEQ's

⁶³ 30 TAC § 39.551(b)(1).

⁶⁴ 30 TAC § 39.551(c).

regulatory jurisdiction does not affect or limit the ability of the landowner and the applicant to execute a private agreement, or of a landowner to seek relief from a court.

COMMENT 19:

Bob Davis, Roger Imm, Hillary Lyon, Alejandra Ray, Janet Schultze, David Smith, David Wyatt, and Tom Yates expressed support for the proposed facility. Several of the comments noted public health benefits of a wastewater treatment facility instead of individual septic systems.

RESPONSE 19:

The Executive Director notes the comment.

COMMENT 20:

Vivian Meleski asked where the effluent will enter Cedar Creek.

RESPONSE 20:

The effluent would travel approximately 1.8 miles in the unnamed tributary before the tributary reaches Little Cedar Creek. The point where the unnamed tributary enters Little Cedar Creek is approximately 0.5 mile east of Farm-to-Market Road 1155 and approximately 0.4 mile west of Little Cedar Creek Road.

COMMENT 21:

Mark Cegielski, Thomas and Maureen Holy, and David Lancaster expressed concern about erosion.

RESPONSE 21:

The TCEQ does not have jurisdiction to address erosion in the wastewater permitting process, unless there is an associated water quality concern.

COMMENT 22:

Mr. Lancaster asked about the retention ponds and would like more information about them.

RESPONSE 22:

If authorized, the CHSC WWTP will not have any retention ponds. According to CHSC's application, the WWTP will be an activated sludge process plant operated in the conventional mode. Treatment units in the Interim phase will include a lift station, bar screen, three aeration basins, a final clarifier, three aerobic sludge digesters, and a chlorine contact chamber. Treatment units in the Final phase will include a lift station, bar screen, eight aeration basins, two final clarifiers, six aerobic sludge digesters, and a chlorine contact chamber. The Final phase facilities will be arranged in two parallel treatment trains so that four aeration basins, a clarifier, and three digesters will be dedicated to each treatment train.

CHSC may be required to provide stormwater retention ponds for the proposed residential and commercial development, however, the executive director does not consider stormwater treatment and retention ponds during its review of domestic wastewater applications. Please contact CHSC for more information about its retention ponds and any other stormwater concerns. Additional information about the

stormwater permitting process can be found at:

http://www.tceq.texas.gov/permitting/stormwater/sw_permits.html

COMMENT 23:

Laura Snell expressed concern that the facility might increase in size.

RESPONSE 23:

If CHSC ever wanted to expand their discharge beyond what is authorized in their draft permit, it would need to apply for a permit amendment and receive approval from the TCEQ. Two public notices would be issued to provide opportunity for public comment on the application. As discussed above, adjacent and downstream landowners would receive each notice in the mail and notices would be published in a local newspaper.

CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT

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

Respectfully submitted,

Texas Commission on Environmental Quality

Zak Covar
Executive Director

Robert Martinez, Director
Environmental Law Division



Kathy J. Humphreys, Staff Attorney
Environmental Law Division
State Bar No. 24006911
P.O. Box 13087, MC 173
Austin, Texas 78711-3087
(512) 239-3417
REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY