

TCEQ DOCKET NO. 2013-2062-IWD

APPLICATION OF STEELY LUMBER §  
CO., INC. FOR RENEWAL OF TPDES §  
PERMIT NO. WQ0004249000 FOR §  
STEELY LUMBER WASTEWATER §  
TREATMENT PLANT IN WALKER §  
COUNTY, TEXAS §

BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

---

**APPLICANT'S RESPONSE TO REQUEST FOR RECONSIDERATION**

Applicant Steely Lumber Co., Inc. ("*Steely Lumber*" or "*Applicant*") files this Response to the Request for Reconsideration filed by Mr. George H. Russell in the above referenced matter. For the reasons stated below, the Request for Reconsideration should be denied or allowed to expire by operation of law.

**I. BACKGROUND**

The Application for the Water Quality Permit Renewal for Permit No. WQ0004249000 (the "*Application*") was received by the Texas Commission on Environmental Quality (the "*TCEQ*") on December 10, 2012. Notice of Receipt of Application and Intent to Obtain Water Quality Permit Renewal was published on December 20, 2012. After technical review and preparation of a Draft Permit, Notice of Application and Preliminary Decision was published on July 4, 2013.

Applicable effluent limitations and monitoring requirements were continued from the existing permit.<sup>1</sup> The Executive Director made several changes to the Application that make the Draft Permit more stringent than the existing permit. First, revised Other Requirement No. 7 was added to provide requirements for lining all new and modified wastewater ponds, which the agency is requiring for all industrial wastewater ponds. Second, other Requirement No. 10 was removed and replaced by new Other Requirement Nos. 10 and 11 to require analytical data for discharges via Outfall 001 after permit issuance. The analytical

---

<sup>1</sup> The description of the elements of the Draft Permit is from the *Statement of Basis/Technical Summary Executive Director's Preliminary Decision, TPDES Permit No. WQ0004249000*, pp. 3-4.

data that was available that was provided with the Application did not demonstrate a significant potential to exceed water-quality based effluent limitations, but additional sampling events could not be conducted from Outfall 001 after submission of the Application since discharges are driven by stormwater and no discharges were made via Outfall 001 after submission of the available data. Third, Other Requirement No. 12 was added to require an investigation of the reasons for an elevated concentration of total suspended solids reported in March 2012, and to require corrective action if necessary and a report the findings to the Executive Director.

The only comments received on the Application were from Mr. Russell. The Executive Director prepared a Response to Comments (“*RTC*”), which was mailed along with a final decision letter on October 7, 2013. The only Request for Reconsideration was received from Mr. Russell by the agency on November 5, 2013.

## **II. ALL ISSUES RAISED IN THE REQUEST FOR RECONSIDERATION HAVE BEEN FULLY CONSIDERED AND APPROPRIATELY ADDRESSED**

TCEQ rules require that a Request for Reconsideration “must expressly state that the person is requesting reconsideration of the executive director’s decision and give reasons why the decision should be reconsidered.”<sup>2</sup> All of the issues that Mr. Russell raises in his Request for Reconsideration have been raised in his comments, and for the reasons that are explained below and in the executive director’s *RTC*, all of the issues have been fully and appropriately addressed. Thus, the Request for Reconsideration raises nothing new, and should be denied.

### **A. Response 1 - Floodplain Issues**

Mr. Russell’s first issue quotes part of the executive director’s response to Comment No. 1 in the *RTC* that states “discharges at Outfall 001 are intermittent and driven by stormwater.” The first issue appears to suggest that the Application if issued would allow Applicant to deposit wastes onto Mr. Russell’s downstream property during floods. First, the Application requests a renewal of an existing permit, and if granted, the renewed permit

---

<sup>2</sup> 30 Texas Admin. Code § 55.201(e).

would be more stringent than the existing permit, as previously noted. Nothing would be authorized that is not already authorized. Second, as explained in the RTC on pp. 4-5, Texas Water Code § 26.027 allows TCEQ to issue permits for the discharge of wastewaters into or adjacent to water in the state. After a review of the Application for almost a year, as succinctly explained in the Decision of the Executive Director issued on October 7, 2013, the executive director has determined that the Application meets the requirements of applicable law, which includes Texas Water Code § 26.027. The Application if granted would allow discharges at Outfall 001 into a very specific discharge route. However, TCEQ does not have authority over flooding if the discharge route floods.<sup>3</sup> TCEQ's issuance of a water quality discharge permit does not grant a permit to flood anyone's property. The Draft Permit does, however, have effluent limitations and other permit conditions that are designed to be protective, and Applicant must comply with those permit conditions. Applicant must comply with the protective effluent limitations even if the discharge takes place during a flood, during which the effluent would be diluted even further.

**B. Response 2 – Sampling at Outfall 001**

The second issue quotes part of the executive director's response to Comment No. 2 in the RTC relating to Applicant's collection of samples at Outfall 001. As the request seems to acknowledge, TCEQ water quality permits include standard monitoring and reporting requirements that apply to all permit holders. There is no justification given regarding why the Application in this case should be different.

**C. Response 3 – Discharge of Wastewater to the Discharge Route**

The third issue quotes the executive director's response to Comment No. 3 in the RTC relating to Applicant's authority from TCEQ to discharge into the discharge route and the treatment of the wastewater effluent. First, Applicant agrees with the executive director's

---

<sup>3</sup> See *TCEQ Executive Director's Initial Brief on Whether Sierra Club and Public Citizen are Affected Persons under Applicable Laws*, TCEQ Docket No. 2011-2199-IWD (June 12, 2012), at pp. 21-22, citing TNRCC Docket No. 2001-0234-MWD (during TNRCC Commission consideration of flooding issues raised in a water quality permitting context, the Commission discussion concluded that flooding is not under the jurisdiction of the TCEQ).

interpretation of the Austin Court of Appeals decision in *Domel v. City of Georgetown*<sup>4</sup> that is the basis for the executive director's response to Comment No. 3 in the RTC. Although the Request for Reconsideration suggests that the Austin Court of Appeals holding does not apply to the Application in this case, the case is directly applicable. The only salient difference between the Application in this case and the permit in the *Domel* case is that in *Domel*, the litigation was centered on whether the permit holder, which was the City of Georgetown, could be liable for a taking of private property. Since the Applicant in this case is not a governmental entity, the Applicant in this case is not subject to a takings claim. All of the other relevant holdings and principles from the *Domel* case which allowed TCEQ to issue the permit to the City of Georgetown to discharge are also applicable to the Application in this case, and allow for TCEQ to authorize the discharge at the discharge point at Outfall 001.

Second, as explained in the Statement of Basis/Technical Summary of the Executive Director's Preliminary Decision, the effluent is far from being untreated. The effluent is subject to a host of specific state and federal technology-based and water quality-based effluent limits that require the effluent to meet specific standards before it can be discharged.

#### **D. Responses 4, 5, and 6 – Chemical Composition of Wastewater**

The fourth, fifth, and sixth issues appear to relate to the composition of the wastewater, and to sampling and monitoring of the wastewater effluent. As explained in the executive director's response to Comment Nos. 4, 5, and 6 in the RTC, the Draft Permit was developed based on regulations developed specifically for the discharges from the exact type of facility as the Applicant's facility. The regulations are intended to preclude adverse toxic effects on aquatic life.

Further, Other Requirement No. 11 of the Draft Permit requires that wastewater discharged from Outfall 001 must be sampled and analyzed for a laundry list of parameters listed in Tables 1 and 2 and Attachment 2 of the permit. Thus, the Draft Permit has been prepared based on well-established federal regulations, and includes a re-opener clause to

---

<sup>4</sup> *Domel v. City of Georgetown*, 6 S.W.3d 349 (Tex. App. – Austin 1999).

allow TCEQ to impose additional or more stringent effluent limits, monitoring requirements, or permit conditions if TCEQ determines that the analysis indicates that it is necessary.

Moreover, as previously stated, TCEQ water quality permits include standard monitoring and reporting requirements that apply to all permit holders, including monitoring of pH. There is no justification given regarding why sampling and monitoring required of the Applicant in this case should be different.

**E. Response 7 – Compliance with 40 Code of Fed. Regulation § 429.124**

The seventh issue quotes the executive director’s response to Comment No. 7 in the RTC relating to “process wastewater.” As explained in the RTC, Other Requirement Nos. 1.b. and 2. expressly define and preclude the discharge of “process wastewater.” Thus, the Draft Permit already precludes the discharge that appears to be the subject of concern in the seventh issue.

**F. Response 8 – Treatment of Wastewater**

The eighth issue appears to refer to the executive director’s response to Comment No. 8 in the RTC relating to “treatment” of wastewater. As previously explained, the effluent is far from being untreated. The effluent is subject to a host of specific state and federal technology-based and water quality-based effluent limits that require the effluent to meet specific standards before it can be discharged. The effluent limits in the Draft Permit apply to a discharge, even if the discharge is during a periodic storm event, and the effluent limits are designed to be protective.

**G. Response 9 - Aerial Inspections**

The ninth issue appears to request aerial inspections relates to the executive director’s response to Comment No. 9 in the RTC. The Application that is the subject of this case is a permitting matter, and an aerial inspection would fall under the realm of enforcement and is not relevant to this proceeding. Although Applicant is required to comply with all terms of the Draft Permit, if issued, the ninth issue is not relevant in a permitting matter.

## V. CONCLUSION AND PRAYER

The Request for Reconsideration only provided the reasons stated above as justification for the nine issues raised.<sup>5</sup> As explained above in response to each reason given, the Request for Reconsideration fails to provide a legal justification to warrant granting any part of the Request for Reconsideration. All of the reasons raised have been fully considered and addressed. Thus, the Request for Reconsideration should be denied. Applicant requests that the Request for Reconsideration be denied by the General Counsel pursuant to TCEQ rules and the authority delegated to the General Counsel to act upon Requests for Reconsideration.<sup>6</sup>

In the alternative, if the General Counsel determines to set this matter for Commission consideration, Applicant requests additional time to more fully brief the issues raised in the Request for Reconsideration. Applicant received the briefing schedule for this matter on January 20, 2014, and identified and obtained counsel a few short days later on January 24, 2014, which provided for an abbreviated opportunity to respond.

Dated: January 27, 2014

RESPECTFULLY SUBMITTED,

By: \_\_\_\_\_



Derek Seal  
State Bar No. 00797404  
Winstead P.C.  
401 Congress  
Suite 2100  
Austin, TX 78701  
Telephone: (512) 370-2800  
Facsimile: (512) 370-2850

---

<sup>5</sup> 30 Texas Admin. Code § 55.201(e).

<sup>6</sup> See 30 Texas Admin. Code § 55.205(b)(2)(if only a request for reconsideration is submitted and the commission has delegated its authority to act on the request to the general counsel, the request need not be set for consideration at a commission meeting); TCEQ Commission, Docket No. 2009-0059-RES, concerning the delegation of certain duties and authority to the General Counsel (February 2, 2009)(the general counsel may set requests for reconsideration for Commission public meetings, or deny such requests).

**CERTIFICATE OF SERVICE**

I certify that I have served true and correct copies of Applicant's Response to Request for Reconsideration to the attached service list via fax, on this the 27<sup>th</sup> day of January, 2014.

A handwritten signature in black ink, appearing to read "Derek Seal", written over a horizontal line.

Derek Seal

Mailing List  
Steely Lumber Co., Inc.  
TCEQ Docket No. 2013-2062-IWD

Chris DeMilliano  
Steely Lumber Co., Inc.  
1405 Southwood Drive  
Huntsville, Texas 77340  
936/295-5898 FAX 936/295-6737

Stephanie Landsman  
Source Environmental Sciences, Inc.  
4100 Westheimer Road, Suite 106  
Houston, Texas 77027  
713/364-1311 FAX 713/621-4588

George Haw Russell  
Educational Video Network, Inc.  
1401 19th Street  
Huntsville, Texas 77340  
936/295-5767 FAX 936/294-0233

Stefanie Skogen, Staff Attorney  
TCEQ Environmental Law Division MC 173  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-0600 FAX 512/239-0606

Satya Dwivedula, P.E.  
TCEQ Water Quality Division MC 148  
PO Box 13087  
Austin, Texas 78711-3087  
512/239-3548 FAX 512/239-4430

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

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

Brian Christian  
TCEQ SBEA Division  
Public Participation and Education Program MC 108  
P.O. Box 13087  
Austin, Texas 78711-3087  
512/239-4000 FAX 512/239-5678

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