

Bryan W. Shaw, Ph.D., P.E., *Chairman*
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Richard A. Hyde, P.E., *Executive Director*



Blas J. Coy, Jr., *Public Interest Counsel*

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

January 27, 2014

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

**RE: STEELY LUMBER CO., INC.
TCEQ DOCKET NO. 2013-2062-IWD**

Dear Ms. Bohac:

Enclosed for filing is the Office of Public Interest Counsel's Response to Request for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Rudy Calderon".

Rudy Calderon, Attorney
Assistant Public Interest Counsel

cc: Mailing List

Enclosure



TCEQ DOCKET NO. 2013-2062-IWD

**IN THE MATTER OF THE
APPLICATION OF STEELY
LUMBER CO., INC. FOR TPDES
PERMIT NO. WQ0004249000**

**BEFORE THE TEXAS
COMMISSION ON
ENVIRONMENTAL QUALITY**

**THE OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO
REQUEST FOR RECONSIDERATION**

To the Honorable Members of the Texas Commission on Environmental Quality:

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (Commission or TCEQ) files this Response to Request for Reconsideration in the above-referenced matter and respectfully shows the following.

I. Introduction

A. Background of Facility

Steely Lumber Co., Inc. (Applicant) has applied to the TCEQ for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004249000, to authorize the discharge of wet decking wastewater, utility wastewater, and stormwater runoff on an intermittent and flow variable basis through Outfall 001. The effluent limitation, based on a 30-day average, is 4.0 milliliters per liter (mg/l) Dissolved Oxygen (DO). The effluent limits in the proposed permit, based on a thirty-day maximum, are 60 mg/l Total Suspended Solids (TSS), 15 mg/l oil and grease, 15 mg/l ammonia (as nitrogen), report chemical oxygen demand, and 35 mg/l carbonaceous biochemical oxygen demand (five-day).

The facility is located at 1405 Southwood Drive, approximately 1.5 miles east of the intersection of U.S. highway 75 and Southwood Drive, and approximately 2.5 miles southeast of the City of Huntsville, Walker County, Texas 77340. The effluent is

discharged to an unnamed ditch, then to Shepherd Creek, then to Winters Bayou, then to East Fork San Jacinto River in Segment No. 1003 of the San Jacinto River Basin. The designated uses for Segment No. 1003 are primary contact recreation, high aquatic life, and public water supply.

B. Procedural Background

TCEQ received this application on December 10, 2012. On December 18, 2012, the Executive Director (ED) declared the application administratively complete. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published on December 20, 2012 in the *Huntsville Item*. The ED completed the technical review of the application on April 26, 2013, and prepared a draft permit. The Notice of Application and Preliminary Decision for a Water Quality Permit (NAPD) was published on July 04, 2013 in the *Huntsville Item*. The public comment period ended on August 5, 2013. On October 4, 2013, the ED filed his Response to Public Comment with the Office of the Chief Clerk. On October 7, 2013, the ED filed his decision with the Office of the Chief Clerk. The Office of the Chief Clerk mailed the ED's decision on October 7, 2013. The deadline to request a reconsideration of the ED's decision was November 6, 2013. On November 5, 2013, TCEQ received a timely Request for Reconsideration from George H. Russell.

II. Applicable Law

Requests for Reconsideration

The ED declared this application administratively complete on December 18, 2012. Because the application was declared administratively complete after September 1, 1999, it is subject to the requirements of Texas Water Code Chapter 5, Subchapter M,

Environmental Permitting Procedures, sections 5.551 to 5.556, added by Acts 1999, 76th Leg., ch 1350 (commonly known as “House Bill 801”). Following the ED’s technical review and consideration of comments, any person may file a request for reconsideration of the ED’s decision. Tex. Water Code § 5.556; 30 Tex. Admin. Code (“TAC”) § 55.201(e). A request for reconsideration must state the reasons why the decision should be reconsidered. *Id.*

III. Discussion

Analysis of the Request for Reconsideration

Mr. Russell’s request for reconsideration raises nine issues in response to the ED’s Response to Public Comment. For convenience, those issues have been consolidated according to common subject matter.

Issues 1 and 3

Mr. Russell expresses concern that runoff during a storm event will force wastewater onto a “flood plain” located on his property. Additionally, Mr. Russell takes issue with the characterization of the wastewater potentially discharged by the applicant onto his “flood plain” as “treated” wastewater.

30 TAC § 309.1 states that “a wastewater treatment plant unit may not be located in the 100-year flood plain unless the plant unit is protected from inundation and damage that may occur during that flood event”. Mr. Russell has not provided information that the facility or his property is located in the 100-year flood plain. Factors such as location and suitability of land use are generally not considered by TCEQ when a permit renewal is sought, but rather when the technical review of a new permit application is being conducted. 30 TAC § 309.12 states “The commission may not issue a permit for a new facility or for the substantial change of an existing facility

unless it finds that the proposed site, when evaluated in light of the proposed design, construction or operational features, minimizes possible contamination of surface water and groundwater”. As was stated earlier, this is a permit renewal application for an existing facility and does not propose any substantial change to the facility. Therefore, Mr. Russell’s concern about a storm event forcing wastewater onto his flood plain cannot be used by the ED to find that the renewal application should be rejected.

Mr. Russell also raises the issue of a storm event forcing wastewater onto his flood plain and the need of the applicant to obtain an easement to cover such an event. Response 3 of the ED’s Response to Public Comment makes it clear that the applicant is not required to obtain an easement to discharge through Mr. Russell’s property. Therefore, Mr. Russell has not presented an issue that would warrant reconsideration of the ED’s decision.

Issues 2, 4, 5, 6, 7, and 8

These issues collectively deal with Mr. Russell’s concerns pertaining to sampling protocol, the chemical composition of the wastewater to be discharged from the facility, who will be conducting the sampling, and the extensiveness of the sampling required. As the ED stated in his Response to Public Comment Nos. 2, 4, 5, 6, 7, and 8 the sampling requirements of the permit are consistent with the type of industry and activity being conducted by the applicant. Furthermore, several of the sampling protocols requested by Mr. Russell, such as TCEQ conducting the sampling rather than the permit holder, are inconsistent with the permitting structure in place across the TCEQ. The ED further states in Response Nos. 2 and 8, that “If a person believes Steely Lumber has discharged effluent in a manner that is in violation of its permit, the person may contact the TCEQ Region 12 Office” and report their suspicions and that “Steely

Lumber was required to disclose in its application which pollutants it will be discharging under the proposed permit. Failure to disclose a pollutant would subject Steely Lumber to enforcement action. Such failures could be discovered during the TCEQ's periodic inspections of the facility. Citizens also may report suspected permit violations". Therefore, Mr. Russell has appropriate recourse should he feel the applicant is in violation of its permit and these issues do not warrant a reconsideration of the ED's decision.

Issue 9

Mr. Russell requests an aerial inspection of the facility to determine any other possible sources of contaminated stormwater runoff. The ED has stated in his Response to Public Comment that such inspections are not standard practice and have not been conducted at the facility. OPIC recommends that denial of such a request, outside of any exigent circumstances, does not present grounds for reconsideration of the ED's decision.

IV. Conclusion

OPIC recommends denying Mr. Russell's request for reconsideration of the ED's decision to grant renewal of TPDES Permit No. WQ0004249000.

Respectfully submitted,

Blas J. Coy, Jr.
Public Interest Counsel

By: 

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CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2014 the original and seven true and correct copies of the Office of Public Interest Counsel's Response to Requests for Hearing were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, Inter-Agency Mail, electronic mail, or by deposit in the U.S. Mail.


Rudy Calderon

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TCEQ DOCKET NO. 2013-2062-IWD

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