

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Zak Covar, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

March 17, 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: DHJB Development, LLC  
TCEQ Docket No. 2013-2228-MWD

Dear Ms. Bohac:

Enclosed for filing is the Executive Director's Response to Requests for Hearing and Request for Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script that reads "Kathy J. Humphreys".

Kathy Humphreys  
Staff Attorney

cc: Mailing List

Enclosure

**TCEQ DOCKET NUMBER 2013-2228-MWD**

**APPLICATION BY DHJB  
DEVELOPMENT, LLC FOR A  
MAJOR AMENDMENT TO TCEQ  
PERMIT NO. WQ0014975001**

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§**

**BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY**

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**EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUESTS and  
REQUEST FOR RECONSIDERATION**

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**I. Introduction**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Requests (RTH) on the application by DHJB Development, LLC (DHJB) for a major amendment to Texas Land Application Permit (TLAP) Permit Number WQ0014975001. Patricia Lux Graham and Robert Fly, Jr. (on behalf of Geosource) submitted contested case hearing (CCH) requests. Robert Fly, Jr. withdrew his hearing request on December 20, 2013.

Attached for Commission consideration are the following:

Attachment A - Technical Summary & Proposed Permit  
Attachment B - ED's Response to Comments (RTC)  
Attachment C - Compliance History  
Attachment D - ED's GIS Map

**II. Description of the Facility**

DHJB applied to the TCEQ for a major amendment to its permit to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 75,000 gallons per day to a daily average flow not to exceed 350,000 gallons per day. The major amendment would also convert the existing permit from authorizing DHJB to dispose of treated effluent via subsurface drip irrigation (TLAP) to authorizing the disposal of treated effluent via discharge into water in the state via a Texas Pollutant

Discharge Elimination System (TPDES) permit. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day via a public access subsurface drip irrigation system with a minimum area of 750,000 square feet. This permit amendment does not continue the authorization for DHJB to use a subsurface drip irrigation system.

The wastewater treatment facility is located approximately 0.7 mile north of Farm-to-Market Road 1863 and 0.5 mile east of US Highway 281 in Comal County, Texas 78163. If the amendment is authorized, the treated effluent will be discharged to an unnamed tributary; then to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. The unclassified receiving water use is limited aquatic life use for the unnamed tributary. The designated uses for Segment No. 1908 are primary contact recreation, public water supply, aquifer protection and high aquatic life use. The proposed outfall will be located in the Edwards Aquifer Contributing Zone above the Edwards Aquifer Recharge Zone. The effluent limitations in the proposed permit will maintain and protect the existing instream uses.

### **III. Procedural Background**

TCEQ received the permit application on September 24, 2012 and declared it administratively complete on November 7, 2012. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published on November 21, 2012 in the *New Braunfels Herald-Zeitung*. The application was declared technically complete on May 2, 2013. The Notice of Application and Preliminary Decision (NAPD) was published on May 17, 2013 in the *New Braunfels Herald-Zeitung*. The combined

Spanish language NORI/NAPD was published in the *La Voz* on August 30, 2013. The public comment period ended on September 30, 2013, the ED Final Decision Letter and RTC was mailed on November 21, 2013. The hearing request period ended on December 23, 2013.

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).

#### **IV. Evaluation of Hearing Requests**

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. For those applications declared administratively complete on or after September 1, 1999, it established new procedures for providing public notice and public comment, and for the Commission's consideration of hearing requests. This application was declared administratively complete on November 7, 2012, and therefore, is subject to the HB 801 requirements. The Commission implemented HB 801 by adopting procedural rules in Title 30 of the Texas Administrative Code (30 TAC) chapters 30, 50, and 55. The regulations governing requests for CCH are found at 30 TAC Chapter 55.

##### **A. Response to Requests**

"The Executive Director, the public interest counsel, and applicant may submit written responses to [hearing] requests . . . ." 30 TAC § 55.209(d).

Responses to hearing requests must specifically address:

- (a) whether the requestor is an affected person;

- (b) whether issues raised in the hearing request are disputed;
- (c) whether the dispute involves questions of fact or law;
- (d) whether the issues were raised during the public comment period;
- (e) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- (f) whether the issues are relevant and material to the decision on the application; and
- (g) a maximum expected duration for the contested case hearing.

30 TAC § 55.209(e).

## **B. Hearing Request Requirements**

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements.

A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided . . . and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment. 30 TAC § 55.201(c).

A hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) identify the person's justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed

facility or activity in a manner not common to members of the general public;

- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

30 TAC § 55.201(d).

### **C. Requirement that Requestor be an Affected Person**

In order to grant a contested case hearing, the commission must determine that a requestor is an affected person.

- (a) For any application, 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. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
  - (1) whether the interest claimed is one protected by the law under which the application will be considered;
  - (2) distance restrictions or other limitations imposed by law on the affected interest;
  - (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
  - (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;

- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

30 TAC § 55.203.

#### **D. Referral to the State Office of Administrative Hearings**

“When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(b). “The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue: (1) involves a disputed question of fact; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the application.” 30 TAC § 50.115(c).

### **V. Analysis of the Hearing Request**

#### **A. Analysis of the Hearing Requests**

The Executive Director analyzed the hearing requests to determine whether they comply with Commission rules, who qualifies as an affected person, what issues may be referred for a contested case hearing, and what is the appropriate length of the hearing.

The public comment period for this permit application ended on September 30, 2013. The period for timely filing a request for a contested case hearing on this permit application ended on December 23, 2013.

**B. Whether the Requestors Complied with 30 TAC § 55.201 (c) and (d).**

1. *Patricia Lux Graham.* Ms. Graham filed her written requests for a Contested Case hearing on May 15, 2013 and December 6, 2013 with TCEQ's Office of the Chief Clerk. Ms. Graham's request included her contact information and raised issues that were raised during the comment period. Ms. Graham also described what she believes are her personal justiciable interest affect by the application. The ED concludes that Ms. Graham's hearing requests substantially comply with the requirements in 30 TAC § 55.201 (c) and (d).

2. *Robert Fly, Jr. (on behalf of Geosouce).* Mr. Fly filed his written request for a Contested Case hearing on November 27, 2012 with TCEQ's Office of the Chief Clerk. Mr. Fly's request included his contact information and raised issues that were raised during the comment period. Mr. Fly also described what he believes are his personal justiciable interest affect by the application. Mr. Fly withdrew his hearing request on December 20, 2013.

**C. Whether the Requestors Meet the Affected Person Requirements.**

1. *Patricia Lux Graham.* According to the landowner map provided by DHJB as part of the application, Ms. Graham owns property along the discharge route, less than one mile downstream of the proposed outfall.

Ms. Graham's hearing request raised the following issues: 1) whether the future uses of her the property would be impermissibly adversely impacted; 2) whether the unnamed tributary is privately owned; 3) whether the unnamed tributary is navigable; 4) whether DHJB must obtain permission from adjacent downstream landowners to use

the discharge route; 5) whether the discharge route is a State controlled watercourse; 6) whether the discharge route was properly characterized; 7) whether DHJB would be able to change the discharge route after the permit is issued; 8) whether the bed and banks of the discharge route will be damaged; 9) whether the treated effluent will negatively impact the cattle that currently graze in the area; 10) whether the northerly fork of the tributary will be destroyed by DHJB during construction of the development; 11) whether an adjacent landowner can fill a portion of the discharge route to prevent the discharge; 12) whether the *Domel v. City of Georgetown* case is valid legal precedent; and 13) whether the public should be allowed to comment on the Executive Director's RTC.

Because of Ms. Graham's location relative to the proposed wastewater treatment facility and the issues she raised, she has an interest that could potentially be affected by the DHJB application that is not common to members of the general public.

The Executive Director recommends that the Commission find that Patricia Lux Graham's hearing request substantially complies with 30 TAC § 55.201 and Patricia Lux Graham is an affected person.

3. *Robert Fly, Jr.* According to Mr. Fly's hearing request, Geosource owns 38 acres approximately 1,200 feet downstream of the proposed facility. Mr. Fly withdrew his hearing requests on December 20, 2013. Accordingly, Mr. Fly's hearing requests and the issues raised in the hearing requests are no longer before the commission.

### **C. Whether Issues Raised Are Referable to State Office of Administrative Hearings (SOAH) for a Contested Case Hearing.**

In addition to recommending to the Commission those persons who qualify as affected persons, the ED analyzes the issues raised in accordance with the regulatory criteria. None of the listed issues were withdrawn. All identified issues in the response are considered disputed, unless otherwise noted.

#### **Issue 1. Whether the current or future use and enjoyment of property downstream of the wastewater treatment facility would be impermissibly adversely impacted by the DHJB application.**

This issue was raised and addressed in Comment 13 of the Executive Director's RTC. This issue involves a disputed question of fact and is relevant and material to the Commission's decision on the application. If the permit is issued, it does not grant DHJB the right to use private or public property for conveyance of wastewater along the discharge route, including property belonging to any individual, partnership, corporation or other entity. Additionally, the permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations.

The Executive Director concludes that this issue is relevant and material and recommends that the Commission refer this issue to SOAH.

#### **Issue 2: Whether the unnamed tributary is privately owned.**

This issue was raised and addressed in Comment 14 of the Executive Director's RTC. This issue involves a disputed question of law which is not relevant and material to the Commission's decision on the application. TCEQ's rules provide that only disputed issues of fact may be referred to SOAH. 30 TAC 50.115(c).

The Executive Director concludes that this issue is not a disputed issue of fact and

therefore recommends that the Commission not refer this issue to SOAH.

**Issue 3: Whether the unnamed tributary is navigable.**

This issue was raised and addressed in Comment 14 of the Executive Director's RTC. This issue involves a disputed question of law which is not relevant and material to the Commission's decision on the application. TCEQ's rules provide that only disputed issues of fact may be referred to SOAH. 30 TAC 50.115(c).

The Executive Director concludes that this issue is an issue of law and therefore recommends that the Commission not refer this issue to SOAH.

**Issue 4: Whether DHJB must obtain permission from adjacent downstream landowners to use the discharge route.**

This issue was raised and addressed in Comment 15 of the Executive Director's RTC. This issue involves a disputed question of law which is not relevant and material to the Commission's decision on the application. TCEQ's rules provide that only disputed issues of fact may be referred to SOAH. 30 TAC 50.115(c).

The Executive Director concludes that this issue is not a disputed issue of fact and therefore recommends that the Commission not refer this issue to SOAH.

**Issue 5: Whether the discharge route has been properly characterized**

This issue was raised and addressed in Comments 4, 5 and 6 of the Executive Director's RTC. This issue involves a disputed question of fact and is relevant and material to the Commission's decision on the application.

The treated effluent will be discharged to an unnamed tributary; then to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. The unclassified receiving water use is limited aquatic life use for the unnamed tributary. The designated

uses for Segment No. 1908 are primary contact recreation, public water supply, aquifer protection and high aquatic life use.

The Executive Director concludes that this issue is relevant and material and recommends that the Commission refer this issue to SOAH.

**Issue 6: Whether DHJB can change the discharge route after the permit is issued.**

This issue was raised and addressed in Comment 15 of the Executive Director's RTC. This issue involves a disputed question of law which is not relevant and material to the Commission's decision on the application. TCEQ's rules provide that only disputed issues of fact may be referred to SOAH. 30 TAC 50.115(c).

The Executive Director concludes that this issue is not a disputed issue of fact and therefore recommends that the Commission not refer this issue to SOAH.

**Issue 7: Whether the treated effluent will negatively impact the cattle that currently graze in the area.**

This issue was raised and addressed in Comment 1 of the Executive Director's RTC. This issue involves a disputed question of fact and is relevant and material to the Commission's decision on the application. Water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, and domestic animals resulting from contact, consumption of aquatic organisms, or consumption of water.

The Executive Director concludes that this issue is relevant and material and recommends that the Commission refer this issue to SOAH.

**Issue 8: Whether the discharge route is a State controlled watercourse.**

This issue was not raised during the comment period. The Texas Water Code § 5.556(e) and TCEQ's rules (30 TAC §50.115(c)(2)) provide that all issues the Commission refers to SOAH must have been raised during the public comment period.

The Executive Director recommends that because this issue was not raised during the comment period the Commission not refer this issue to SOAH.

**Issue 9: Whether the bed and banks of the discharge route will be damaged.**

This issue was not raised during the comment period. The Texas Water Code § 5.556(e) and TCEQ's rules (30 TAC §50.115(c)(2)) provide that all issues the Commission refers to SOAH must have been raised during the public comment period.

The Executive Director recommends that because this issue was not raised during the comment period the Commission not refer this issue to SOAH.

**Issue 10: Whether the northerly fork of the tributary will be destroyed by the Applicant during construction of the development.**

This issue was not raised during the comment period. The Texas Water Code § 5.556(e) and TCEQ's rules (30 TAC §50.115(c)(2)) provide that all issues the Commission refers to SOAH must have been raised during the public comment period.

The Executive Director recommends that because this issue was not raised during the comment period the Commission not refer this issue to SOAH.

**Issue 11: Whether an adjacent landowner can fill a portion of the discharge route to prevent the discharge.**

This issue was not raised during the comment period. The Texas Water Code § 5.556(e) and TCEQ's rules (30 TAC § 55.201(d)) provide that all issues the Commission refers to SOAH must have been raised during the public comment period.

The Executive Director recommends that because this issue was not raised during the comment period the Commission not refer this issue to SOAH.

**Issue 12: Whether the *Domel v. City of Georgetown* case is valid legal precedent.**

This issue was not raised during the comment period. The Texas Water Code § 5.556(e) and TCEQ's rules (30 TAC §50.115(c)(2)) provide that all issues the Commission refers to SOAH must have been raised during the public comment period.

The Executive Director recommends that because this issue was not raised during the comment period the Commission not refer this issue to SOAH.

**Issue 13: Whether the public should be allowed to comment on the Executive Director's responses in his response to comments.**

This issue was not raised during the comment period. The Texas Water Code § 5.556(e) and TCEQ's rules (30 TAC §50.115(c)(2)) provide that all issues the Commission refers to SOAH must have been raised during the public comment period.

The Executive Director recommends that because this issue was not raised during the comment period the Commission not refer this issue to SOAH.

**VI. REQUEST FOR RECONSIDERATION**

Patricia Lux Graham also filed a Request for Reconsideration (RFR). The RFR was filed concurrently with Ms. Graham's request for a contested case hearing filed on December 6, 2013. Ms. Graham asserts that the ED should deny DHJB's application because the ED does not understand what DHJB has proposed. Ms. Graham raises five issues in her RFR that are discussed in the ED's response to HR above. Specifically, Ms. Graham asserts that the ED should reconsider his decision because: 1) *Domel v. City of*

*Georgetown* case should not be considered legal precedent; 2) the discharge route was not properly characterized; 3) she should have been allowed to respond to the ED's RTC; 4) the discharge route is a state controlled watercourse; and 5) DHJB intends on rerouting the watercourse if the permit is issued. Issues 2, 4, and 5 are fact issues which Ms. Graham raised during the comment period and were adequately addressed in the ED's RTC. Issues 1 and 3 are questions of law and do not warrant reconsideration of the ED's decision. The RFR did not raise any new fact issues, as such the ED recommends that it be denied.

The ED recommends the Commission deny the RFR.

#### **VII. Executive Director's Recommendations**

The ED recommends the following actions by the Commission:

1. The ED recommends that the Commission deny the RFR.
2. The ED recommends that the Commission find Patricia Lux Graham is an affected person and grant her hearing requests.
3. The ED recommends that the Commission find Robert Fly, Jr. withdrew his hearing request and both the hearing request and the issues raised in the hearing request are no longer before the commission.
4. If referred to SOAH, first refer the matter to Alternative Dispute Resolution for a reasonable period.
5. If referred to SOAH, refer the following issues as identified by the ED:  
Issue 1. Whether the current or future use and enjoyment of property downstream of the wastewater treatment facility would be impermissibly

adversely impacted by the DHJB application.

Issue 5. Whether the discharge route was properly characterized.

Issue 7. Whether the treated effluent will negatively impact the cattle that currently graze in the area.

6. If referred to SOAH, deny all other issues as identified by the ED
7. If referred to SOAH, the ED recommends that the duration between preliminary hearing and the presentation of a proposal for decision to the Commission be nine months.

Respectfully submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Richard A. Hyde, P.E., Executive Director

Robert Martinez, Director  
Environmental Law Division

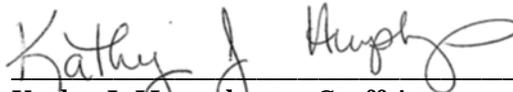
By 

Kathy J. Humphreys, Staff Attorney  
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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

## **CERTIFICATE OF SERVICE**

I hereby certify that on March 17, 2014 the original and seven true and correct copies of the Executive Director's Response to Hearing Request relating to the application for DHJB Development, LLC, for a major amendment to TCEQ Permit No. WQ0014975001 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, electronic mail, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.

A handwritten signature in cursive script, reading "Kathy J. Humphreys", written over a horizontal line.

**Kathy J. Humphreys, Staff Attorney  
Environmental Law Division  
State Bar No. 24006911**

**MAILING LIST  
DHJB DEVELOPMENT, LLC  
DOCKET NO. 2013-2228-MWD; PERMIT NO. WQ0014975001**

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**FOR THE EXECUTIVE DIRECTOR**  
via electronic mail:

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**FOR PUBLIC INTEREST COUNSEL**  
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**FOR ALTERNATIVE DISPUTE  
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**FOR THE CHIEF CLERK:**

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Texas Commission on Environmental  
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**REQUESTER(S):**

Patricia Lux Graham  
102 Alma Ln  
Rockport Tx 78382-8004

# **ATTACHMENT A**

**STATEMENT OF BASIS/TECHNICAL SUMMARY  
AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION**

DESCRIPTION OF APPLICATION

Applicant: DHJB Development, LLC;  
Texas Pollutant Discharge Elimination System (TPDES) Permit No.  
WQ0014975001, TX0133825

Regulated Activity: Domestic Wastewater Permit

Type of Application: Major Amendment

Request: Major amendment to increase flow and change from subsurface drip irrigation system to a discharge permit.

Authority: Federal Clean Water Act (CWA) § 402; Texas Water Code (TWC) § 26.027; 30 TAC Chapters 30, 305, 307, 309, 312, and 319; Commission policies; and EPA guidelines.

EXECUTIVE DIRECTOR RECOMMENDATION

The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The draft permit includes an expiration date of **March 1, 2018** according to 30 TAC § 305.71, Basin Permitting.

REASON FOR PROJECT PROPOSED

The applicant has applied to the Texas Commission on Environmental Quality (TCEQ) for an amendment of its existing permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 0.0375 million gallons per day (MGD) in the Interim I Phase, 0.115 MGD in the Interim II Phase and 0.350 MGD in the Final Phase. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 0.0375 million gallons per day (MGD) in the Interim phase and 0.075 MGD in the Final Phase via a public access subsurface drip irrigation system with a minimum area of 750,000 square feet. The proposed wastewater treatment facility when completed, will serve the 767-acre Johnson Ranch in Comal County.

PROJECT DESCRIPTION AND LOCATION

The Johnson Ranch Wastewater Treatment Facility will be an activated sludge process plant operated in the extended aeration mode. Treatment units for the Interim I Phase will include bar screen, aeration basin, alum injection, secondary clarifier, filtration system, sludge holding tank and chlorine contact chamber. Treatment units for the Interim II Phase and the Final Phase will include bar screen, aeration basin, final clarifier, alum injection, filtration system, secondary clarifier, sludge holding tank and chlorine contact chamber. The facility has not been constructed.

The draft permit authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

The plant site will be located approximately 0.7 mile north of Farm-to-Market Road 1863 and 0.5 mile east of US Highway 281 in Comal County, Texas 78163.

The treated effluent will be discharged to an unnamed tributary; thence to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. The unclassified receiving water use is limited aquatic life use for the unnamed tributary. The designated uses for Segment No. 1908 are primary

contact recreation, public water supply, aquifer protection and high aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

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 significant degradation of water quality is expected in Upper Cibolo Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

Effluent limitations for the conventional effluent parameters (i.e., Biochemical Oxygen Demand or Carbonaceous Biochemical Oxygen Demand, Ammonia Nitrogen, etc.) are based on stream standards and waste load allocations for water quality limited streams as established in the Texas Surface Water Quality Standards and the State of Texas Water Quality Management Plan (WQMP).

The effluent limits recommended have been reviewed for consistency with the WQMP. The limits are not contained in the approved WQMP. However, these limits will be included in the next WQMP update. A Waste Load Evaluation (WLE) for dissolved oxygen has not been prepared for Segment No. 1908.

A priority watershed of critical concern has been identified in Segment No. 1908 in Comal County. The Texas wild-rice (*Zizania texana*), Comal Springs riffle beetle (*Heterelmis comalensis*), Peck's cave amphipod (*Stygobromus pecki*), foundtain darter (*Etheostoma fonticola*), San Marcos gambusia (*Gambusia georgei*), San Marcos salamander (*Eurycea nana*), Texas blind salamander (*Eurycea rathbuni*), and the Comal Springs dryopid beetle (*Stygoparnus comalensis*) have been determined to occur in the contributing zone of the southern segment of the Edwards Aquifer in Segment No. 1908. To make this determination for Texas Pollutant Discharge Elimination System (TPDES) permits, TCEQ and EPA only considered aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the United State Fish and Wildlife Service's (USFWS) biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. The presence of the Texas wild-rice (*Zizania texana*), Comel Springs riffle beetle (*Heterelmis comalensis*), Peck's cave amphipod (*Stygobromus pecki*) fountain darter (*Etheostoma fonticola*), San Macos gambusia (*Gambusia georgei*), San Marcos salamander (*Eurycea nana*), Texas blind salamander (*Eurycea rathbuni*), and the Comal Springs dryopid beetle (*Stygoparnus comalensis*) requires EPA review and, if appropriate, consultation with USFWS.

Upper Cibolo Creek in Segment No. 1908 is currently listed on the State's inventory of impaired and threatened waters, the 2010 Clean Water Act Section 303(d) list. The listing is specifically for elevated levels of bactria. The impairment in Upper Cibolo Creek is from approximately two miles upstream of Hwy 87 in Boerne to the upper end of the segment (AU 1908\_02. This facility will be designed to provide adequate disinfection by chlorination and when operated properly should not add to the bacterial impairment of the segment. In order to ensure that the proposed discharge meets the stream bacterial standard, an effluent limitation of 126 CFU or MPN of *E. coli* per 100 ml in the existing permit has been continued in the draft permit.

#### SUMMARY OF EFFLUENT DATA

Self-reporting data is not available since the facility is not in operation.

### DRAFT PERMIT CONDITIONS

The draft permit authorizes the discharge of treated domestic wastewater at an Interim I phase volume not to exceed a daily average flow of 0.0375 million gallons per day (MGD), at an Interim II phase volume not to exceed 0.115 MGD, and at a Final Phase volume not to exceed a daily average flow of 0.350 MGD.

The effluent limitations in the Interim I phase, Interim II phase and Final phase of the draft permit, based on a 30-day average, are 5 mg/l CBOD<sub>5</sub>, 5 mg/l TSS, 2 mg/l NH<sub>3</sub>-N, 0.5 mg/l Total Phosphorus, 126 CFU or MPN of *E. coli* per 100 ml and 4.0 mg/l minimum dissolved oxygen (DO). The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The permittee shall comply with the requirements of 30 TAC § 309.13 (a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC § 309.13(e).

The draft permit includes Sludge Provisions according to the requirements of 30 TAC Chapter 312, Sludge Use, Disposal and Transportation. The draft permit authorizes the disposal of sludge at a TCEQ authorized land application site or co-disposal landfill.

### SUMMARY OF CHANGES FROM APPLICATION

There are no changes from the application.

### SUMMARY OF CHANGES FROM EXISTING PERMIT

The Interim and Final phases in the existing permit for the disposal of treated domestic wastewater via public access subsurface drip irrigation have been deleted since they are no longer required. The draft permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 0.350 million gallons per day (MGD) in the Final Phase.

The proposed subsurface drip irrigation system shall not be constructed and instead, the permittee shall begin construction of the wastewater treatment facilities for the discharge of treated domestic wastewater at a daily average flow not to exceed 0.0375 million gallons per day (MGD) in the Interim I phase. An Interim II phase at a daily average flow not to exceed 0.115 MGD has been added to the permit.

*E. coli* bacteria limits have been continued in the draft permit in accordance with the recent amendments to 30 TAC Chapters 309 and 319.

The Standard Permit Conditions, Sludge Provisions, and Other Requirements sections of the draft permit have been updated.

The effluent limitations in the Interim and Final phases of the existing permit, based on a 30-day average, are 20 mg/l BOD<sub>5</sub>, 20 mg/l TSS, 126 *E. coli* CFU or MPN per 100 ml single grab. The effluent shall be chlorinated in a chlorine contact chamber to a residual of 1.0 mg/l with a minimum detention time of 20 minutes.

### BASIS FOR DRAFT PERMIT

The following items were considered in developing the draft permit:

1. Application received September 20, 2012 and additional information received October 17, 2012.
2. Permit No. WQ0014975001 issued August 26, 2010.
3. The effluent limitations and conditions in the draft permit comply with the Texas Surface Water Quality Standards, 30 TAC §§ 307.1 - 307.10, effective August 17, 2000 and the EPA approved portions of the 2010 Texas Surface Water Quality Standards, effective July 22, 2010.
4. The effluent limitations in the draft permit meet the requirements for secondary treatment and the requirements for disinfection according to 30 TAC Chapter 309, Subchapter A: Domestic Wastewater Effluent Limitations.
5. Interoffice memoranda from the Water Quality Assessment Section of the TCEQ Water Quality Division.
6. Consistency with the Coastal Management Plan: The facility is not located in the Coastal Management Program boundary.
7. "Procedures to Implement the Texas Surface Water Quality Standards", Texas Commission on Environmental Quality, January 2003.
8. Texas 2010 Clean Water Act Section 303(d) List, Texas Commission on Environmental Quality, August 25, 2010; approved by the EPA November 18, 2011.
9. TNRCC Guidance Document for Establishing Monitoring Frequencies for Domestic and Industrial Wastewater Discharge Permits, Document No. 98-001.000-OWR-WQ, May 1998.

#### PROCEDURES FOR FINAL DECISION

When an application is declared administratively complete, the Chief Clerk sends a letter to the applicant advising the applicant to publish the Notice of Receipt of Application and Intent to Obtain Permit in the newspaper. In addition, the Chief Clerk instructs the applicant to place a copy of the application in a public place for review and copying in the county where the facility is or will be located. This application will be in a public place throughout the comment period. The Chief Clerk also mails this notice to any interested persons and, if required, to landowners identified in the permit application. This notice informs the public about the application, and provides that an interested person may file comments on the application or request a contested case hearing or a public meeting.

Once a draft permit is completed, it is sent, along with the Executive Director's preliminary decision, as contained in the technical summary or fact sheet, to the Chief Clerk. At that time, Notice of Application and Preliminary Decision will be mailed to the same people and published in the same newspaper as the prior notice. This notice sets a deadline for making public comments. The applicant must place a copy of the Executive Director's preliminary decision and draft permit in the public place with the application. This notice sets a deadline for public comment.

Any interested person may request a public meeting on the application until the deadline for filing public comments. A public meeting is intended for the taking of public comment, and is not a contested case proceeding.

After the public comment deadline, the Executive Director prepares a response to all significant public comments on the application or the draft permit raised during the public comment period. The Chief Clerk then mails the Executive Director's Response to Comments and Final Decision to people who have filed comments, requested a contested case hearing, or requested to be on the mailing list. This notice provides that if a person is not satisfied with the Executive Director's response and decision, they can request a contested case hearing or file a request to reconsider the Executive Director's decision within 30 days after the notice is mailed.

The Executive Director will issue the permit unless a written hearing request or request for reconsideration is filed within 30 days after the Executive Director's Response to Comments and Final Decision is mailed. If a hearing request or request for reconsideration is filed, the Executive Director will not issue the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

If the Executive Director calls a public meeting or the Commission grants a contested case hearing as described above, the Commission will give notice of the date, time, and place of the meeting or hearing. If a hearing request or request for reconsideration is made, the Commission will consider all public comments in making its decision and shall either adopt the Executive Director's response to public comments or prepare its own response.

For additional information about this application contact David Akoma at (512) 239-1444.



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David Akoma  
Municipal Permits Team  
Wastewater Permitting Section (MC 148)

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April 30, 2013  
Date



TPDES PERMIT NO. WQ0014975001  
[For TCEQ office use only - EPA I.D.  
No. TX0133825]

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
P.O. Box 13087  
Austin, Texas 78711-3087

This amendment supersedes and replaces  
TCEQ Permit No. WQ0014975001  
issued August 26, 2010.

PERMIT TO DISCHARGE WASTES  
under provisions of  
Section 402 of the Clean Water Act  
and Chapter 26 of the Texas Water Code

DHJB Development, LLC

whose mailing address is

102A Cordillera Ridge  
Boerne, Texas 78006

is authorized to treat and discharge wastes from the Johnson Ranch Wastewater Treatment Facility,  
SIC Code 6531

located approximately 0.7 mile north of Farm-to-Market Road 1863 and 0.5 mile east of US Highway  
281 in Comal County, Texas 78163

to an unnamed tributary; thence to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River  
Basin

only according with effluent limitations, monitoring requirements and other conditions set forth in this permit, as well as the rules of the Texas Commission on Environmental Quality (TCEQ), the laws of the State of Texas, and other orders of the TCEQ. 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.

This permit shall expire at midnight, **March 1, 2018**.

ISSUED DATE:

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For the Commission

INTERIM I EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the date of issuance and lasting through the completion of expansion to 0.115 MGD facilities, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.0375 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 104 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Min. Self-Monitoring Requirements</u>	
	Daily Avg mg/l (lbs/day)	7-day Avg mg/l	Daily Max mg/l	Report Daily Avg. & Max. Single Grab	Measurement Frequency Sample Type
Flow, MGD	Report	N/A	Report	N/A	Continuous Totalizing Meter
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (1.6)	10	20	30	One/week Grab
Total Suspended Solids	5 (1.6)	10	20	30	One/week Grab
Ammonia Nitrogen	2 (0.63)	5	10	15	One/week Grab
Total Phosphorus	0.5 (0.16)	2	4	6	One/week Grab
<i>E. coli</i> , CFU or MPN/100 ml	126	N/A	N/A	399	One/quarter Grab

2. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.

3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.

4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.

5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.

6. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

INTERIM II EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the completion to the 0.115 million gallons per day (MGD) facilities, and lasting through the completion of expansion to the 0.350 MGD facilities, the permittee is authorized to discharge subject to the following effluent limitations:

The daily average flow of effluent shall not exceed 0.115 MGD; nor shall the average discharge during any two-hour period (2-hour peak) exceed 319 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Min. Self-Monitoring Requirements</u>		
	Daily Avg mg/l (lbs/day)	7-day Avg mg/l	Daily Max mg/l	Single Grab mg/l	Report Daily Avg. & Max. Single Grab Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	N/A	Continuous	Totalizing Meter
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (4.8)	10	20	30	One/week	Grab
Total Suspended Solids	5 (4.8)	10	20	30	One/week	Grab
Ammonia Nitrogen	2 (1.9)	5	10	15	One/week	Grab
Total Phosphorus	0.5 (0.48)	2	4	6	One/week	Grab
<i>E. coli</i> , CFU or MPN/100 ml	126	N/A	N/A	399	One/month	Grab

2. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
6. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

FINAL EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

Outfall Number 001

1. During the period beginning upon the completion of expansion to the 0.350 million gallons per day (MGD) facilities, and lasting through the date of expiration, the permittee is authorized to discharge subject to the following effluent limitations:  
  
The daily average flow of effluent shall not exceed 0.350 million gallons per day (MGD); nor shall the average discharge during any two-hour period (2-hour peak) exceed 972 gallons per minute (gpm).

<u>Effluent Characteristic</u>	<u>Discharge Limitations</u>			<u>Min. Self-Monitoring Requirements</u>		
	Daily Avg mg/l (lbs/day)	7-day Avg mg/l	Daily Max mg/l	Single Grab mg/l	Report Daily Avg. & Max. Single Grab Measurement Frequency	Sample Type
Flow, MGD	Report	N/A	Report	N/A	Continuous	Totalizing Meter
Carbonaceous Biochemical Oxygen Demand (5-day)	5 (15)	10	20	30	One/week	Grab
Total Suspended Solids	5 (15)	10	20	30	One/week	Grab
Ammonia Nitrogen	2 (5.8)	5	10	15	One/week	Grab
Total Phosphorus	0.5 (1.5)	2	4	6	One/week	Grab
<i>E. coli</i> , CFU or MPN/100 ml	126	N/A	N/A	399	One/month	Grab

2. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes (based on peak flow), and shall be monitored five times per week by grab sample. An equivalent method of disinfection may be substituted only with prior approval of the Executive Director.
3. The pH shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per month by grab sample.
4. There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.
5. Effluent monitoring samples shall be taken at the following location(s): Following the final treatment unit.
6. The effluent shall contain a minimum dissolved oxygen of 4.0 mg/l and shall be monitored once per week by grab sample.

## DEFINITIONS AND STANDARD PERMIT CONDITIONS

As required by Title 30 Texas Administrative Code (TAC) Chapter 305, certain regulations appear as standard conditions in waste discharge permits. 30 TAC § 305.121 - 305.129 (relating to Permit Characteristics and Conditions) as promulgated under the Texas Water Code (TWC) §§ 5.103 and 5.105, and the Texas Health and Safety Code (THSC) §§ 361.017 and 361.024(a), establish the characteristics and standards for waste discharge permits, including sewage sludge, and those sections of 40 Code of Federal Regulations (CFR) Part 122 adopted by reference by the Commission. The following text includes these conditions and incorporates them into this permit. All definitions in TWC § 26.001 and 30 TAC Chapter 305 shall apply to this permit and are incorporated by reference. Some specific definitions of words or phrases used in this permit are as follows:

### 1. Flow Measurements

- a. Annual average flow - the arithmetic average of all daily flow determinations taken within the preceding 12 consecutive calendar months. The annual average flow determination shall consist of daily flow volume determinations made by a totalizing meter, charted on a chart recorder and limited to major domestic wastewater discharge facilities with one million gallons per day or greater permitted flow.
- b. Daily average flow - the arithmetic average of all determinations of the daily flow within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine the daily flow, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.
- c. Daily maximum flow - the highest total flow for any 24-hour period in a calendar month.
- d. Instantaneous flow - the measured flow during the minimum time required to interpret the flow measuring device.
- e. 2-hour peak flow (domestic wastewater treatment plants) - the maximum flow sustained for a two-hour period during the period of daily discharge. The average of multiple measurements of instantaneous maximum flow within a two-hour period may be used to calculate the 2-hour peak flow.
- f. Maximum 2-hour peak flow (domestic wastewater treatment plants) - the highest 2-hour peak flow for any 24-hour period in a calendar month.

### 2. Concentration Measurements

- a. Daily average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar month, consisting of at least four separate representative measurements.
  - i. For domestic wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values in the previous four consecutive month period consisting of at least four measurements shall be utilized as the daily average concentration.

- ii. For all other wastewater treatment plants - When four samples are not available in a calendar month, the arithmetic average (weighted by flow) of all values taken during the month shall be utilized as the daily average concentration.
- b. 7-day average concentration - the arithmetic average of all effluent samples, composite or grab as required by this permit, within a period of one calendar week, Sunday through Saturday.
- c. Daily maximum concentration - the maximum concentration measured on a single day, by the sample type specified in the permit, within a period of one calendar month.
- d. Daily discharge - the discharge of a pollutant measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in terms of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the sampling day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the sampling day.

The daily discharge determination of concentration made using a composite sample shall be the concentration of the composite sample. When grab samples are used, the daily discharge determination of concentration shall be the arithmetic average (weighted by flow value) of all samples collected during that day.

- e. Bacteria concentration (*E. coli* or Enterococci) - Colony Forming Units (CFU) or Most Probable Number (MPN) of bacteria per 100 milliliters effluent. The daily average bacteria concentration is a geometric mean of the values for the effluent samples collected in a calendar month. The geometric mean shall be determined by calculating the  $n$ th root of the product of all measurements made in a calendar month, where  $n$  equals the number of measurements made; or, computed as the antilogarithm of the arithmetic mean of the logarithms of all measurements made in a calendar month. For any measurement of bacteria equaling zero, a substituted value of one shall be made for input into either computation method. If specified, the 7-day average for bacteria is the geometric mean of the values for all effluent samples collected during a calendar week.
  - f. Daily average loading (lbs/day) - the arithmetic average of all daily discharge loading calculations during a period of one calendar month. These calculations must be made for each day of the month that a parameter is analyzed. The daily discharge, in terms of mass (lbs/day), is calculated as (Flow, MGD x Concentration, mg/l x 8.34).
  - g. Daily maximum loading (lbs/day) - the highest daily discharge, in terms of mass (lbs/day), within a period of one calendar month.
3. Sample Type
- a. Composite sample - For domestic wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC § 319.9 (a). For industrial wastewater, a composite sample is a sample made up of a minimum of three effluent portions collected in a continuous 24-hour period or during the period of daily discharge if less than 24 hours, and combined in volumes proportional to flow, and collected at the intervals required by 30 TAC § 319.9 (b).

- b. Grab sample - an individual sample collected in less than 15 minutes.
4. Treatment Facility (facility) - wastewater facilities used in the conveyance, storage, treatment, recycling, reclamation and/or disposal of domestic sewage, industrial wastes, agricultural wastes, recreational wastes, or other wastes including sludge handling or disposal facilities under the jurisdiction of the Commission.
5. The term "sewage sludge" is defined as solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in 30 TAC Chapter 312. This includes the solids that have not been classified as hazardous waste separated from wastewater by unit processes.
6. Bypass - the intentional diversion of a waste stream from any portion of a treatment facility.

## **MONITORING AND REPORTING REQUIREMENTS**

### **1. Self-Reporting**

Monitoring results shall be provided at the intervals specified in the permit. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall conduct effluent sampling and reporting in accordance with 30 TAC §§ 319.4 - 319.12. Unless otherwise specified, a monthly effluent report shall be submitted each month, to the Enforcement Division (MC 224), by the 20<sup>th</sup> day of the following month for each discharge which is described by this permit whether or not a discharge is made for that month. Monitoring results must be reported on an approved self-report form that is signed and certified as required by Monitoring and Reporting Requirements No. 10.

As provided by state law, the permittee is subject to administrative, civil and criminal penalties, as applicable, for negligently or knowingly violating the Clean Water Act (CWA); TWC §§ 26, 27, and 28; and THSC § 361, including but not limited to knowingly making any false statement, representation, or certification on any report, record, or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or noncompliance, or falsifying, tampering with or knowingly rendering inaccurate any monitoring device or method required by this permit or violating any other requirement imposed by state or federal regulations.

### **2. Test Procedures**

- a. Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§ 319.11 - 319.12. Measurements, tests, and calculations shall be accurately accomplished in a representative manner.
- b. All laboratory tests submitted to demonstrate compliance with this permit must meet the requirements of 30 TAC § 25, Environmental Testing Laboratory Accreditation and Certification.

### **3. Records of Results**

- a. Monitoring samples and measurements shall be taken at times and in a manner so as to be representative of the monitored activity.

- b. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by this permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR § 264.73(b)(9) shall be retained at the facility site, or shall be readily available for review by a TCEQ representative for a period of three years from the date of the record or sample, measurement, report, application or certification. This period shall be extended at the request of the Executive Director.
- c. Records of monitoring activities shall include the following:
  - i. date, time and place of sample or measurement;
  - ii. identity of individual who collected the sample or made the measurement.
  - iii. date and time of analysis;
  - iv. identity of the individual and laboratory who performed the analysis;
  - v. the technique or method of analysis; and
  - vi. the results of the analysis or measurement and quality assurance/quality control records.

The period during which records are required to be kept shall be automatically extended to the date of the final disposition of any administrative or judicial enforcement action that may be instituted against the permittee.

#### 4. Additional Monitoring by Permittee

If the permittee monitors any pollutant at the location(s) designated herein more frequently than required by this permit using approved analytical methods as specified above, all results of such monitoring shall be included in the calculation and reporting of the values submitted on the approved self-report form. Increased frequency of sampling shall be indicated on the self-report form.

#### 5. Calibration of Instruments

All automatic flow measuring or recording devices and all totalizing meters for measuring flows shall be accurately calibrated by a trained person at plant start-up and as often thereafter as necessary to ensure accuracy, but not less often than annually unless authorized by the Executive Director for a longer period. Such person shall verify in writing that the device is operating properly and giving accurate results. Copies of the verification shall be retained at the facility site and/or shall be readily available for review by a TCEQ representative for a period of three years.

#### 6. Compliance Schedule Reports

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later

than 14 days following each schedule date to the Regional Office and the Enforcement Division (MC 224).

7. Noncompliance Notification

- a. In accordance with 30 TAC § 305.125(9) any noncompliance which may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Report of such information shall be provided orally or by facsimile transmission (FAX) to the Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the Regional Office and the Enforcement Division (MC 224) within five working days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
  - b. The following violations shall be reported under Monitoring and Reporting Requirement 7.a.:
    - i. Unauthorized discharges as defined in Permit Condition 2(g).
    - ii. Any unanticipated bypass that exceeds any effluent limitation in the permit.
    - iii. Violation of a permitted maximum daily discharge limitation for pollutants listed specifically in the Other Requirements section of an Industrial TPDES permit.
  - c. In addition to the above, any effluent violation which deviates from the permitted effluent limitation by more than 40% shall be reported by the permittee in writing to the Regional Office and the Enforcement Division (MC 224) within 5 working days of becoming aware of the noncompliance.
  - d. Any noncompliance other than that specified in this section, or any required information not submitted or submitted incorrectly, shall be reported to the Enforcement Division (MC 224) as promptly as possible. For effluent limitation violations, noncompliances shall be reported on the approved self-report form.
8. In accordance with the procedures described in 30 TAC §§ 35.301 - 35.303 (relating to Water Quality Emergency and Temporary Orders) if the permittee knows in advance of the need for a bypass, it shall submit prior notice by applying for such authorization.

9. Changes in Discharges of Toxic Substances

All existing manufacturing, commercial, mining, and silvicultural permittees shall notify the Regional Office, orally or by facsimile transmission within 24 hours, and both the Regional Office and the Enforcement Division (MC 224) in writing within five (5) working days, after becoming aware of or having reason to believe:

- a. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant listed at 40 CFR Part 122, Appendix D,

Tables II and III (excluding Total Phenols) which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:

- i. One hundred micrograms per liter (100 µg/L);
  - ii. Two hundred micrograms per liter (200 µg/L) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/L) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/L) for antimony;
  - iii. Five (5) times the maximum concentration value reported for that pollutant in the permit application; or
  - iv. The level established by the TCEQ.
- b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
- i. Five hundred micrograms per liter (500 µg/L);
  - ii. One milligram per liter (1 mg/L) for antimony;
  - iii. Ten (10) times the maximum concentration value reported for that pollutant in the permit application; or
  - iv. The level established by the TCEQ.

#### 10. Signatories to Reports

All reports and other information requested by the Executive Director shall be signed by the person and in the manner required by 30 TAC § 305.128 (relating to Signatories to Reports).

11. All Publicly Owned Treatment Works (POTWs) must provide adequate notice to the Executive Director of the following:
- a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to CWA § 301 or § 306 if it were directly discharging those pollutants;
  - b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit; and
  - c. For the purpose of this paragraph, adequate notice shall include information on:
    - i. The quality and quantity of effluent introduced into the POTW; and
    - ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

**PERMIT CONDITIONS**

## 1. General

- a. When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in an application or in any report to the Executive Director, it shall promptly submit such facts or information.
- b. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:
  - i. Violation of any terms or conditions of this permit;
  - ii. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
  - iii. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- c. The permittee shall furnish to the Executive Director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending or terminating the permit. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the permit.

## 2. Compliance

- a. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.
- b. The permittee has a duty to comply with all conditions of the permit. Failure to comply with any permit condition constitutes a violation of the permit and the Texas Water Code or the Texas Health and Safety Code, and is grounds for enforcement action, for permit amendment, revocation, or suspension, or for denial of a permit renewal application or an application for a permit for another facility.
- c. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
- d. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation that has a reasonable likelihood of adversely affecting human health or the environment.
- e. Authorization from the Commission is required before beginning any change in the permitted facility or activity that may result in noncompliance with any permit requirements.

- f. A permit may be amended, suspended and reissued, or revoked for cause in accordance with 30 TAC §§ 305.62 and 305.66 and TWC§ 7.302. The filing of a request by the permittee for a permit amendment, suspension and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.
  - g. There shall be no unauthorized discharge of wastewater or any other waste. For the purpose of this permit, an unauthorized discharge is considered to be any discharge of wastewater into or adjacent to water in the state at any location not permitted as an outfall or otherwise defined in the Other Requirements section of this permit.
  - h. In accordance with 30 TAC § 305.535(a), the permittee may allow any bypass to occur from a TPDES permitted facility which does not cause permitted effluent limitations to be exceeded or an unauthorized discharge to occur, but only if the bypass is also for essential maintenance to assure efficient operation.
  - i. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under TWC §§ 7.051 - 7.075 (relating to Administrative Penalties), 7.101 - 7.111 (relating to Civil Penalties), and 7.141 - 7.202 (relating to Criminal Offenses and Penalties) for violations including, but not limited to, negligently or knowingly violating the federal CWA §§ 301, 302, 306, 307, 308, 318, or 405, or any condition or limitation implementing any sections in a permit issued under the CWA § 402, or any requirement imposed in a pretreatment program approved under the CWA §§ 402 (a)(3) or 402 (b)(8).
3. Inspections and Entry
- a. Inspection and entry shall be allowed as prescribed in the TWC Chapters 26, 27, and 28, and THSC § 361.
  - b. The members of the Commission and employees and agents of the Commission are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order of the Commission. Members, employees, or agents of the Commission and Commission contractors are entitled to enter public or private property at any reasonable time to investigate or monitor or, if the responsible party is not responsive or there is an immediate danger to public health or the environment, to remove or remediate a condition related to the quality of water in the state. Members, employees, Commission contractors, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, Commission contractor, or agent is refused the right to enter in or on public or private property under this authority, the Executive Director may invoke the remedies authorized in TWC § 7.002. The statement above, that Commission entry shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection, is not grounds for denial or restriction of entry to any part of the facility, but merely describes the Commission's duty to observe appropriate rules and regulations during an inspection.

## 4. Permit Amendment and/or Renewal

- a. The permittee shall give notice to the Executive Director as soon as possible of any planned physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements. Notice shall also be required under this paragraph when:
  - i. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in accordance with 30 TAC § 305.534 (relating to New Sources and New Dischargers); or
  - ii. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations in the permit, nor to notification requirements in Monitoring and Reporting Requirements No. 9;
  - iii. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.
- b. Prior to any facility modifications, additions, or expansions that will increase the plant capacity beyond the permitted flow, the permittee must apply for and obtain proper authorization from the Commission before commencing construction.
- c. The permittee must apply for an amendment or renewal at least 180 days prior to expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. If an application is submitted prior to the expiration date of the permit, the existing permit shall remain in effect until the application is approved, denied, or returned. If the application is returned or denied, authorization to continue such activity shall terminate upon the effective date of the action. If an application is not submitted prior to the expiration date of the permit, the permit shall expire and authorization to continue such activity shall terminate.
- d. Prior to accepting or generating wastes which are not described in the permit application or which would result in a significant change in the quantity or quality of the existing discharge, the permittee must report the proposed changes to the Commission. The permittee must apply for a permit amendment reflecting any necessary changes in permit conditions, including effluent limitations for pollutants not identified and limited by this permit.
- e. In accordance with the TWC § 26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.
- f. If any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is promulgated under CWA § 307(a) for a toxic pollutant which is present in the discharge and that standard or prohibition is more stringent than any limitation on the pollutant in this permit, this permit shall be

modified or revoked and reissued to conform to the toxic effluent standard or prohibition. The permittee shall comply with effluent standards or prohibitions established under CWA § 307(a) for toxic pollutants within the time provided in the regulations that established those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

5. Permit Transfer

- a. Prior to any transfer of this permit, Commission approval must be obtained. The Commission shall be notified in writing of any change in control or ownership of facilities authorized by this permit. Such notification should be sent to the Applications Review and Processing Team (MC 148) of the Water Quality Division.
- b. A permit may be transferred only according to the provisions of 30 TAC § 305.64 (relating to Transfer of Permits) and 30 TAC § 50.133 (relating to Executive Director Action on Application or WQMP update).

6. Relationship to Hazardous Waste Activities

This permit does not authorize any activity of hazardous waste storage, processing, or disposal that requires a permit or other authorization pursuant to the Texas Health and Safety Code.

7. Relationship to Water Rights

Disposal of treated effluent by any means other than discharge directly to water in the state must be specifically authorized in this permit and may require a permit pursuant to TWC Chapter 11.

8. Property Rights

A permit does not convey any property rights of any sort, or any exclusive privilege.

9. Permit Enforceability

The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

10. Relationship to Permit Application

The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

11. Notice of Bankruptcy

- a. Each permittee shall notify the Executive Director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 Bankruptcy of the United States Code (11 USC) by or against:

- i. the permittee;
  - ii. an entity (as that term is defined in 11 USC, § 101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or
  - iii. an affiliate (as that term is defined in 11 USC, § 101(2)) of the permittee.
- b. This notification must indicate:
- i. the name of the permittee and the permit number(s);
  - ii. the bankruptcy court in which the petition for bankruptcy was filed; and
  - iii. the date of filing of the petition.

### **OPERATIONAL REQUIREMENTS**

1. The permittee shall at all times ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. Process control, maintenance, and operations records shall be retained at the facility site, or shall be readily available for review by a TCEQ representative, for a period of three years.
2. Upon request by the Executive Director, the permittee shall take appropriate samples and provide proper analysis in order to demonstrate compliance with Commission rules. Unless otherwise specified in this permit or otherwise ordered by the Commission, the permittee shall comply with all applicable provisions of 30 TAC Chapter 312 concerning sewage sludge use and disposal and 30 TAC §§ 319.21 - 319.29 concerning the discharge of certain hazardous metals.
3. Domestic wastewater treatment facilities shall comply with the following provisions:
  - a. The permittee shall notify the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, in writing, of any facility expansion at least 90 days prior to conducting such activity.
  - b. The permittee shall submit a closure plan for review and approval to the Municipal Permits Team, Wastewater Permitting Section (MC 148) of the Water Quality Division, for any closure activity at least 90 days prior to conducting such activity. Closure is the act of permanently taking a waste management unit or treatment facility out of service and includes the permanent removal from service of any pit, tank, pond, lagoon, surface impoundment and/or other treatment unit regulated by this permit.
4. The permittee is responsible for installing prior to plant start-up, and subsequently maintaining, adequate safeguards to prevent the discharge of untreated or inadequately treated wastes during electrical power failures by means of alternate power sources, standby generators, and/or retention of inadequately treated wastewater.

5. Unless otherwise specified, the permittee shall provide a readily accessible sampling point and, where applicable, an effluent flow measuring device or other acceptable means by which effluent flow may be determined.
6. The permittee shall remit an annual water quality fee to the Commission as required by 30 TAC Chapter 21. Failure to pay the fee may result in revocation of this permit under TWC § 7.302(b)(6).
7. Documentation

For all written notifications to the Commission required of the permittee by this permit, the permittee shall keep and make available a copy of each such notification under the same conditions as self-monitoring data are required to be kept and made available. Except for information required for TPDES permit applications, effluent data, including effluent data in permits, draft permits and permit applications, and other information specified as not confidential in 30 TAC §§ 1.5(d), any information submitted pursuant to this permit may be claimed as confidential by the submitter. Any such claim must be asserted in the manner prescribed in the application form or by stamping the words confidential business information on each page containing such information. If no claim is made at the time of submission, information may be made available to the public without further notice. If the Commission or Executive Director agrees with the designation of confidentiality, the TCEQ will not provide the information for public inspection unless required by the Texas Attorney General or a court pursuant to an open records request. If the Executive Director does not agree with the designation of confidentiality, the person submitting the information will be notified.

8. Facilities that generate domestic wastewater shall comply with the following provisions; domestic wastewater treatment facilities at permitted industrial sites are excluded.
  - a. Whenever flow measurements for any domestic sewage treatment facility reach 75% of the permitted daily average or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the domestic wastewater treatment and/or collection facilities. Whenever the flow reaches 90% of the permitted daily average or annual average flow for three consecutive months, the permittee shall obtain necessary authorization from the Commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a domestic wastewater treatment facility which reaches 75% of the permitted daily average or annual average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee shall submit an engineering report supporting this claim to the Executive Director of the Commission.

If in the judgment of the Executive Director the population to be served will not cause permit noncompliance, then the requirement of this section may be waived. To be effective, any waiver must be in writing and signed by the Director of the Enforcement Division (MC 149) of the Commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit; however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

- b. The plans and specifications for domestic sewage collection and treatment works associated with any domestic permit must be approved by the Commission and failure to secure approval before commencing construction of such works or making a discharge is a violation of this permit and each day is an additional violation until approval has been secured.
  - c. Permits for domestic wastewater treatment plants are granted subject to the policy of the Commission to encourage the development of area-wide waste collection, treatment, and disposal systems. The Commission reserves the right to amend any domestic wastewater permit in accordance with applicable procedural requirements to require the system covered by this permit to be integrated into an area-wide system, should such be developed; to require the delivery of the wastes authorized to be collected in, treated by or discharged from said system, to such area-wide system; or to amend this permit in any other particular to effectuate the Commission's policy. Such amendments may be made when the changes required are advisable for water quality control purposes and are feasible on the basis of waste treatment technology, engineering, financial, and related considerations existing at the time the changes are required, exclusive of the loss of investment in or revenues from any then existing or proposed waste collection, treatment or disposal system.
9. Domestic wastewater treatment plants shall be operated and maintained by sewage plant operators holding a valid certificate of competency at the required level as defined in 30 TAC Chapter 30.
  10. For Publicly Owned Treatment Works (POTWs), the 30-day average (or monthly average) percent removal for BOD and TSS shall not be less than 85%, unless otherwise authorized by this permit.
  11. Facilities that generate industrial solid waste as defined in 30 TAC § 335.1 shall comply with these provisions:
    - a. Any solid waste, as defined in 30 TAC § 335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335, relating to Industrial Solid Waste Management.
    - b. Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.
    - c. The permittee shall provide written notification, pursuant to the requirements of 30 TAC § 335.8(b)(1), to the Environmental Cleanup Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.

- d. Construction of any industrial solid waste management unit requires the prior written notification of the proposed activity to the Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division. No person shall dispose of industrial solid waste, including sludge or other solids from wastewater treatment processes, prior to fulfilling the deed recordation requirements of 30 TAC § 335.5.
- e. The term "industrial solid waste management unit" means a landfill, surface impoundment, waste-pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or any other structure vessel, appurtenance, or other improvement on land used to manage industrial solid waste.
- f. The permittee shall keep management records for all sludge (or other waste) removed from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TAC § 335 and must include the following, as it pertains to wastewater treatment and discharge:
  - i. Volume of waste and date(s) generated from treatment process;
  - ii. Volume of waste disposed of on-site or shipped off-site;
  - iii. Date(s) of disposal;
  - iv. Identity of hauler or transporter;
  - v. Location of disposal site; and
  - vi. Method of final disposal.

The above records shall be maintained on a monthly basis. The records shall be retained at the facility site, or shall be readily available for review by authorized representatives of the TCEQ for at least five years.

12. For industrial facilities to which the requirements of 30 TAC § 335 do not apply, sludge and solid wastes, including tank cleaning and contaminated solids for disposal, shall be disposed of in accordance with THSC § 361.

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## SLUDGE PROVISIONS

The permittee is authorized to dispose of sludge only at a Texas Commission on Environmental Quality (TCEQ) authorized land application site or co-disposal landfill. **The disposal of sludge by land application on property owned, leased or under the direct control of the permittee is a violation of the permit unless the site is authorized with the TCEQ. This provision does not authorize Distribution and Marketing of sludge. This provision does not authorize land application of Class A Sludge. This provision does not authorize the permittee to land apply sludge on property owned, leased or under the direct control of the permittee.**

### SECTION I. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE LAND APPLICATION

#### A. General Requirements

1. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC § 312 and all other applicable state and federal regulations in a manner that protects public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present in the sludge.
2. In all cases, if the person (permit holder) who prepares the sewage sludge supplies the sewage sludge to another person for land application use or to the owner or lease holder of the land, the permit holder shall provide necessary information to the parties who receive the sludge to assure compliance with these regulations.
3. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

#### B. Testing Requirements

1. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I [Toxicity Characteristic Leaching Procedure (TCLP)] or other method that receives the prior approval of the TCEQ for the contaminants listed in 40 CFR Part 261.24, Table 1. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal. Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Permitting and Remediation Support Division and the Regional Director (MC Region 13) within seven (7) days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 13) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 30 of each year.

2. Sewage sludge shall not be applied to the land if the concentration of the pollutants exceeds the pollutant concentration criteria in Table 1. The frequency of testing for pollutants in Table 1 is found in Section I.C.

TABLE 1

<u>Pollutant</u>	<u>Ceiling Concentration</u> <u>(Milligrams per kilogram)*</u>
Arsenic	75
Cadmium	85
Chromium	3000
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
PCBs	49
Selenium	100
Zinc	7500

\* Dry weight basis

3. Pathogen Control

All sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following methods to ensure that the sludge meets either the Class A or Class B pathogen requirements.

- a. Six alternatives are available to demonstrate compliance with Class A sewage sludge. The first 4 options require either the density of fecal coliform in the sewage sludge be less than 1000 Most Probable Number (MPN) per gram of total solids (dry weight basis), or the density of Salmonella sp. bacteria in the sewage sludge be less than three MPN per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. Below are the additional requirements necessary to meet the definition of a Class A sludge.

Alternative 1 - The temperature of the sewage sludge that is used or disposed shall be maintained at or above a specific value for a period of time. See 30 TAC § 312.82(a)(2)(A) for specific information.

Alternative 2 - The pH of the sewage sludge that is used or disposed shall be raised to above 12 std. units and shall remain above 12 std. units for 72 hours.

The temperature of the sewage sludge shall be above 52° Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12 std. units.

At the end of the 72-hour period during which the pH of the sewage sludge is above 12 std. units, the sewage sludge shall be air dried to achieve a percent solids in the sewage sludge greater than 50%.

Alternative 3 - The sewage sludge shall be analyzed for enteric viruses prior to pathogen treatment. The limit for enteric viruses is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC § 312.82(a)(2)(C)(i-iii) for specific information. The sewage sludge shall be analyzed for viable helminth ova prior to pathogen treatment. The limit for viable helminth ova is less than one per four grams of total solids (dry weight basis) either before or following pathogen treatment. See 30 TAC § 312.82(a)(2)(C)(iv-vi) for specific information.

Alternative 4 - The density of enteric viruses in the sewage sludge shall be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed. The density of viable helminth ova in the sewage sludge shall be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed.

Alternative 5 (PFRP) - Sewage sludge that is used or disposed of shall be treated in one of the processes to Further Reduce Pathogens (PFRP) described in 40 CFR Part 503, Appendix B. PFRP include composting, heat drying, heat treatment, and thermophilic aerobic digestion.

Alternative 6 (PFRP Equivalent) - Sewage sludge that is used or disposed of shall be treated in a process that has been approved by the U.S. Environmental Protection Agency as being equivalent to those in Alternative 5.

- b. Three alternatives are available to demonstrate compliance with Class B criteria for sewage sludge.

Alternative 1

- i. A minimum of seven random samples of the sewage sludge shall be collected within 48 hours of the time the sewage sludge is used or disposed of during each monitoring episode for the sewage sludge.
- ii. The geometric mean of the density of fecal coliform in the samples collected shall be less than either 2,000,000 MPN per gram of total solids (dry weight basis) or 2,000,000 Colony Forming Units per gram of total solids (dry weight basis).

Alternative 2 - Sewage sludge that is used or disposed of shall be treated in one of the Processes to Significantly Reduce Pathogens (PSRP) described in 40 CFR Part 503, Appendix B, so long as all of the following requirements are met by the generator of the sewage sludge.

- i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;
- ii. An independent Texas Licensed Professional Engineer must make a certification to the generator of a sewage sludge that the wastewater treatment facility generating the sewage sludge is designed to achieve one of the PSRP at the permitted design loading of the facility. The certification need only be repeated if the design loading of the facility is increased. The certification shall include a statement indicating the design meets all the applicable standards specified in Appendix B of 40 CFR Part 503;
- iii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established U.S. Environmental Protection Agency final guidance;
- iv. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review; and
- v. If the sewage sludge is generated from a mixture of sources, resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the PSRP, and shall meet the certification, operation, and record keeping requirements of this paragraph.

Alternative 3 - Sewage sludge shall be treated in an equivalent process that has been approved by the U.S. Environmental Protection Agency, so long as all of the following requirements are met by the generator of the sewage sludge.

- i. Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in paragraph v. below;
- ii. Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the processes to significantly reduce pathogens at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and record keeping requirements shall be in accordance with established U.S. Environmental Protection Agency final guidance;
- iii. All certification records and operational records describing how the requirements of this paragraph were met shall be kept by the generator for a minimum of three years and be available for inspection by commission staff for review;

- iv. The Executive Director will accept from the U.S. Environmental Protection Agency a finding of equivalency to the defined PSRP; and
- v. If the sewage sludge is generated from a mixture of sources resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product shall meet one of the Processes to Significantly Reduce Pathogens, and shall meet the certification, operation, and record keeping requirements of this paragraph.

In addition, the following site restrictions must be met if Class B sludge is land applied:

- i. Food crops with harvested parts that touch the sewage sludge/soil mixture and are totally above the land surface shall not be harvested for 14 months after application of sewage sludge.
  - ii. Food crops with harvested parts below the surface of the land shall not be harvested for 20 months after application of sewage sludge when the sewage sludge remains on the land surface for 4 months or longer prior to incorporation into the soil.
  - iii. Food crops with harvested parts below the surface of the land shall not be harvested for 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than 4 months prior to incorporation into the soil.
  - iv. Food crops, feed crops, and fiber crops shall not be harvested for 30 days after application of sewage sludge.
  - v. Animals shall not be allowed to graze on the land for 30 days after application of sewage sludge.
  - vi. Turf grown on land where sewage sludge is applied shall not be harvested for 1 year after application of the sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn.
  - vii. Public access to land with a high potential for public exposure shall be restricted for 1 year after application of sewage sludge.
  - viii. Public access to land with a low potential for public exposure shall be restricted for 30 days after application of sewage sludge.
  - ix. Land application of sludge shall be in accordance with the buffer zone requirements found in 30 TAC § 312.44.
4. Vector Attraction Reduction Requirements

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, or a reclamation site shall be treated by one of the following Alternatives 1 through 10 for vector attraction reduction.

- Alternative 1 - The mass of volatile solids in the sewage sludge shall be reduced by a minimum of 38%.
- Alternative 2 - If Alternative 1 cannot be met for an anaerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge anaerobically in the laboratory in a bench-scale unit for 40 additional days at a temperature between 30° and 37° Celsius. Volatile solids must be reduced by less than 17% to demonstrate compliance.
- Alternative 3 - If Alternative 1 cannot be met for an aerobically digested sludge, demonstration can be made by digesting a portion of the previously digested sludge with percent solids of two percent or less aerobically in the laboratory in a bench-scale unit for 30 additional days at 20° Celsius. Volatile solids must be reduced by less than 15% to demonstrate compliance.
- Alternative 4 - The specific oxygen uptake rate (SOUR) for sewage sludge treated in an aerobic process shall be equal to or less than 1.5 milligrams of oxygen per hour per gram of total solids (dry weight basis) at a temperature of 20° Celsius.
- Alternative 5 - Sewage sludge shall be treated in an aerobic process for 14 days or longer. During that time, the temperature of the sewage sludge shall be higher than 40° Celsius and the average temperature of the sewage sludge shall be higher than 45° Celsius.
- Alternative 6 - The pH of sewage sludge shall be raised to 12 or higher by alkali addition and, without the addition of more alkali shall remain at 12 or higher for two hours and then remain at a pH of 11.5 or higher for an additional 22 hours at the time the sewage sludge is prepared for sale or given away in a bag or other container.
- Alternative 7 - The percent solids of sewage sludge that does not contain unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 75% based on the moisture content and total solids prior to mixing with other materials. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.
- Alternative 8 - The percent solids of sewage sludge that contains unstabilized solids generated in a primary wastewater treatment process shall be equal to or greater than 90% based on the moisture content and total solids prior to mixing with other materials at the time the sludge is used. Unstabilized solids are defined as organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.
- Alternative 9 -
- i. Sewage sludge shall be injected below the surface of the land.
  - ii. No significant amount of the sewage sludge shall be present on

the land surface within one hour after the sewage sludge is injected.

- iii. When sewage sludge that is injected below the surface of the land is Class A with respect to pathogens, the sewage sludge shall be injected below the land surface within eight hours after being discharged from the pathogen treatment process.

Alternative 10-

- i. Sewage sludge applied to the land surface or placed on a surface disposal site shall be incorporated into the soil within six hours after application to or placement on the land.
- ii. When sewage sludge that is incorporated into the soil is Class A with respect to pathogens, the sewage sludge shall be applied to or placed on the land within eight hours after being discharged from the pathogen treatment process.

**C. Monitoring Requirements**

- Toxicity Characteristic Leaching Procedure (TCLP) Test - once during the term of this permit
- PCBs - once during the term of this permit

All metal constituents and fecal coliform or Salmonella sp. bacteria shall be monitored at the appropriate frequency shown below, pursuant to 30 TAC § 312.46(a)(1):

<u>Amount of sewage sludge (*) metric tons per 365-day period</u>	<u>Monitoring Frequency</u>
0 to less than 290	Once/Year
290 to less than 1,500	Once/Quarter
1,500 to less than 15,000	Once/Two Months
15,000 or greater	Once/Month

(\*) *The amount of bulk sewage sludge applied to the land (dry wt. basis).*

Representative samples of sewage sludge shall be collected and analyzed in accordance with the methods referenced in 30 TAC § 312.7

**SECTION II. REQUIREMENTS SPECIFIC TO BULK SEWAGE SLUDGE FOR APPLICATION TO THE LAND MEETING CLASS A or B PATHOGEN REDUCTION AND THE CUMULATIVE LOADING RATES IN TABLE 2, OR CLASS B PATHOGEN REDUCTION AND THE POLLUTANT CONCENTRATIONS IN TABLE 3**

For those permittees meeting Class A or B pathogen reduction requirements and that meet the cumulative loading rates in Table 2 below, or the Class B pathogen reduction requirements and contain concentrations of pollutants below listed in Table 3, the following conditions apply:

**A. Pollutant Limits**

Table 2

<u>Pollutant</u>	<u>Cumulative Pollutant Loading Rate (pounds per acre)*</u>
Arsenic	36
Cadmium	35
Chromium	2677
Copper	1339
Lead	268
Mercury	15
Molybdenum	Report Only
Nickel	375
Selenium	89
Zinc	2500

Table 3

<u>Pollutant</u>	<u>Monthly Average Concentration (milligrams per kilogram)*</u>
Arsenic	41
Cadmium	39
Chromium	1200
Copper	1500
Lead	300
Mercury	17
Molybdenum	Report Only
Nickel	420
Selenium	36
Zinc	2800

\*Dry weight basis

**B. Pathogen Control**

All bulk sewage sludge that is applied to agricultural land, forest, a public contact site, a reclamation site, shall be treated by either Class A or Class B pathogen reduction requirements as defined above in Section I.B.3.

**C. Management Practices**

1. Bulk sewage sludge shall not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other waters in the State.
2. Bulk sewage sludge not meeting Class A requirements shall be land applied in a manner which complies with the Management Requirements in accordance with 30 TAC § 312.44.
3. Bulk sewage sludge shall be applied at or below the agronomic rate of the cover crop.
4. An information sheet shall be provided to the person who receives bulk sewage sludge sold or given away. The information sheet shall contain the following information:
  - a. The name and address of the person who prepared the sewage sludge that is sold or given away in a bag or other container for application to the land.
  - b. A statement that application of the sewage sludge to the land is prohibited except in accordance with the instruction on the label or information sheet.
  - c. The annual whole sludge application rate for the sewage sludge application rate for the sewage sludge that does not cause any of the cumulative pollutant loading rates in Table 2 above to be exceeded, unless the pollutant concentrations in Table 3 found in Section II above are met.

**D. Notification Requirements**

1. If bulk sewage sludge is applied to land in a State other than Texas, written notice shall be provided prior to the initial land application to the permitting authority for the State in which the bulk sewage sludge is proposed to be applied. The notice shall include:
  - a. The location, by street address, and specific latitude and longitude, of each land application site.
  - b. The approximate time period bulk sewage sludge will be applied to the site.
  - c. The name, address, telephone number, and National Pollutant Discharge Elimination System permit number (if appropriate) for the person who will apply the bulk sewage sludge.
2. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.

**E. Record keeping Requirements**

The sludge documents will be retained at the facility site and/or shall be readily available for review by a TCEQ representative. The person who prepares bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at

the facility site and/or shall be readily available for review by a TCEQ representative for a period of five years. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC § 312.47 for persons who land apply.

1. The concentration (mg/kg) in the sludge of each pollutant listed in Table 3 above and the applicable pollutant concentration criteria (mg/kg), or the applicable cumulative pollutant loading rate and the applicable cumulative pollutant loading rate limit (lbs/ac) listed in Table 2 above.
2. A description of how the pathogen reduction requirements are met (including site restrictions for Class B sludge, if applicable).
3. A description of how the vector attraction reduction requirements are met.
4. A description of how the management practices listed above in Section II.C are being met.
5. The following certification statement:

“I certify, under penalty of law, that the applicable pathogen requirements in 30 TAC § 312.82(a) or (b) and the vector attraction reduction requirements in 30 TAC § 312.83(b) have been met for each site on which bulk sewage sludge is applied. This determination has been made under my direction and supervision in accordance with the system designed to ensure that qualified personnel properly gather and evaluate the information used to determine that the management practices have been met. I am aware that there are significant penalties for false certification including fine and imprisonment.”

6. The recommended agronomic loading rate from the references listed in Section II.C.3. above, as well as the actual agronomic loading rate shall be retained. The person who applies bulk sewage sludge or a sewage sludge material shall develop the following information and shall retain the information at the facility site and/or shall be readily available for review by a TCEQ representative indefinitely. If the permittee supplies the sludge to another person who land applies the sludge, the permittee shall notify the land applier of the requirements for record keeping found in 30 TAC § 312.47 for persons who land apply:
  - a. A certification statement that all applicable requirements (specifically listed) have been met, and that the permittee understands that there are significant penalties for false certification including fine and imprisonment. See 30 TAC § 312.47(a)(4)(A)(ii) or 30 TAC § 312.47(a)(5)(A)(ii), as applicable, and to the permittee’s specific sludge treatment activities.
  - b. The location, by street address, and specific latitude and longitude, of each site on which sludge is applied.
  - c. The number of acres in each site on which bulk sludge is applied.
  - d. The date and time sludge is applied to each site.

- e. The cumulative amount of each pollutant in pounds/acre listed in Table 2 applied to each site.
- f. The total amount of sludge applied to each site in dry tons.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

## **F. Reporting Requirements**

The permittee shall report annually to the TCEQ Regional Office (MC Region 13) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division, by September 30 of each year the following information:

1. Results of tests performed for pollutants found in either Table 2 or 3 as appropriate for the permittee's land application practices.
2. The frequency of monitoring listed in Section I.C. that applies to the permittee.
3. Toxicity Characteristic Leaching Procedure (TCLP) results.
4. Identity of hauler(s) and TCEQ transporter number.
5. PCB concentration in sludge in mg/kg.
6. Date(s) of disposal.
7. Owner of disposal site(s).
8. Texas Commission on Environmental Quality registration number, if applicable.
9. Amount of sludge disposal dry weight (lbs/acre) at each disposal site.
10. The concentration (mg/kg) in the sludge of each pollutant listed in Table 1 (defined as a monthly average) as well as the applicable pollutant concentration criteria (mg/kg) listed in Table 3 above, or the applicable pollutant loading rate limit (lbs/acre) listed in Table 2 above if it exceeds 90% of the limit.
11. Level of pathogen reduction achieved (Class A or Class B).
12. Alternative used as listed in Section I.B.3.(a. or b.). Alternatives describe how the pathogen reduction requirements are met. If Class B sludge, include information on how site restrictions were met.
13. Vector attraction reduction alternative used as listed in Section I.B.4.
14. Annual sludge production in dry tons/year.
15. Amount of sludge land applied in dry tons/year.
16. The certification statement listed in either 30 TAC § 312.47(a)(4)(A)(ii) or 30 TAC § 312.47(a)(5)(A)(ii) as applicable to the permittee's sludge treatment activities, shall be attached to the annual reporting form.

17. When the amount of any pollutant applied to the land exceeds 90% of the cumulative pollutant loading rate for that pollutant, as described in Table 2, the permittee shall report the following information as an attachment to the annual reporting form.

- a. The location, by street address, and specific latitude and longitude.
- b. The number of acres in each site on which bulk sewage sludge is applied.
- c. The date and time bulk sewage sludge is applied to each site.
- d. The cumulative amount of each pollutant (i.e., pounds/acre) listed in Table 2 in the bulk sewage sludge applied to each site.
- e. The amount of sewage sludge (i.e., dry tons) applied to each site.

The above records shall be maintained on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

**SECTION III. REQUIREMENTS APPLYING TO ALL SEWAGE SLUDGE  
DISPOSED IN A MUNICIPAL SOLID WASTE LANDFILL**

- A. The permittee shall handle and dispose of sewage sludge in accordance with 30 TAC § 330 and all other applicable state and federal regulations to protect public health and the environment from any reasonably anticipated adverse effects due to any toxic pollutants that may be present. The permittee shall ensure that the sewage sludge meets the requirements in 30 TAC § 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.
- B. If the permittee generates sewage sludge and supplies that sewage sludge to the owner or operator of a municipal solid waste landfill (MSWLF) for disposal, the permittee shall provide to the owner or operator of the MSWLF appropriate information needed to be in compliance with the provisions of this permit.
- C. The permittee shall give 180 days prior notice to the Executive Director in care of the Wastewater Permitting Section (MC 148) of the Water Quality Division of any change planned in the sewage sludge disposal practice.
- D. Sewage sludge shall be tested once during the term of this permit in accordance with the method specified in both 40 CFR Part 261, Appendix II and 40 CFR Part 268, Appendix I (Toxicity Characteristic Leaching Procedure) or other method, which receives the prior approval of the TCEQ for contaminants listed in Table 1 of 40 CFR § 261.24. Sewage sludge failing this test shall be managed according to RCRA standards for generators of hazardous waste, and the waste's disposition must be in accordance with all applicable requirements for hazardous waste processing, storage, or disposal.

Following failure of any TCLP test, the management or disposal of sewage sludge at a facility other than an authorized hazardous waste processing, storage, or disposal facility shall be prohibited until such time as the permittee can demonstrate the sewage sludge no longer exhibits the hazardous waste toxicity characteristics (as demonstrated by the results of the TCLP tests). A written report shall be provided to both the TCEQ Registration and Reporting Section (MC 129) of the Permitting and Remediation Support Division and the Regional Director (MC Region 13) of the appropriate TCEQ field office within 7 days after failing the TCLP Test.

The report shall contain test results, certification that unauthorized waste management has stopped and a summary of alternative disposal plans that comply with RCRA standards for the management of hazardous waste. The report shall be addressed to: Director, Registration, Review, and Reporting Division (MC 129), Texas Commission on Environmental Quality, P. O. Box 13087, Austin, Texas 78711-3087. In addition, the permittee shall prepare an annual report on the results of all sludge toxicity testing. This annual report shall be submitted to the TCEQ Regional Office (MC Region 13) and the Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 30 of each year.

- E. Sewage sludge shall be tested as needed, in accordance with the requirements of 30 TAC Chapter 330.
- F. Record keeping Requirements

The permittee shall develop the following information and shall retain the information for five years.

1. The description (including procedures followed and the results) of all liquid Paint Filter Tests performed.
2. The description (including procedures followed and results) of all TCLP tests performed.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

#### G. Reporting Requirements

The permittee shall report annually to the TCEQ Regional Office (MC Region 13) and Water Quality Compliance Monitoring Team (MC 224) of the Enforcement Division by September 30 of each year the following information:

1. Toxicity Characteristic Leaching Procedure (TCLP) results.
2. Annual sludge production in dry tons/year.
3. Amount of sludge disposed in a municipal solid waste landfill in dry tons/year.
4. Amount of sludge transported interstate in dry tons/year.
5. A certification that the sewage sludge meets the requirements of 30 TAC § 330 concerning the quality of the sludge disposed in a municipal solid waste landfill.
6. Identity of hauler(s) and transporter registration number.
7. Owner of disposal site(s).
8. Location of disposal site(s).
9. Date(s) of disposal.

The above records shall be maintained on-site on a monthly basis and shall be made available to the Texas Commission on Environmental Quality upon request.

**OTHER REQUIREMENTS**

1. The permittee shall employ or contract with one or more licensed wastewater treatment facility operators or wastewater system operations companies holding a valid license or registration according to the requirements of 30 TAC Chapter 30, Occupational Licenses and Registrations and in particular 30 TAC Chapter 30, Subchapter J, Wastewater Operators and Operations Companies.

This Category C facility must be operated by a chief operator or an operator holding a Category C license or higher. The facility must be operated a minimum of five days per week by the licensed chief operator or an operator holding the required level of license or higher. The licensed chief operator or operator holding the required level of license or higher must be available by telephone or pager seven days per week. Where shift operation of the wastewater treatment facility is necessary, each shift that does not have the on-site supervision of the licensed chief operator must be supervised by an operator in charge who is licensed not less than one level below the category for the facility.

2. The facility is not located in the Coastal Management Program boundary.
3. The permittee shall provide facilities for the protection of its wastewater treatment facilities from a 100-year flood.
4. Prior to construction of the Interim I, Interim II and Final phases of the treatment facilities, the permittee shall submit to the TCEQ Wastewater Permitting Section (MC 148) a summary submittal letter in accordance with the requirements in 30 TAC Section 217.6(c). If requested by the Wastewater Permitting Section, the permittee shall submit plans, specifications and a final engineering design report which comply with 30 TAC Chapter 217, Design Criteria for Wastewater Treatment Systems. The permittee shall clearly show how the treatment system will meet the final permitted effluent limitations required on Pages 2, 2a and 2b of the permit.
5. The permittee is hereby placed on notice that this permit may be reviewed by the TCEQ after the completion of any new intensive water quality survey on Segment No. 1908 of the San Antonio River Basin and any subsequent updating of the water quality model for Segment No. 1908, in order to determine if the limitations and conditions contained herein are consistent with any such revised model. The permit may be amended, pursuant to 30 TAC § 305.62, as a result of such review. The permittee is also hereby placed on notice that effluent limits may be made more stringent at renewal based on, for example, any change to modeling protocol approved in the TCEQ Continuing Planning Process.
6. The permittee shall comply with the requirements of 30 TAC § 309.13 (a) through (d). In addition, by ownership of the required buffer zone area, the permittee shall comply with the requirements of 30 TAC § 309.13(e).
7. Reporting requirements according to 30 TAC Sections 319.1-319.11 and any additional effluent reporting requirements contained in this permit are suspended from the effective date of the permit until plant startup or discharge, whichever occurs first, from the facility described by this permit. The permittee shall provide written notice to the TCEQ Regional Office (MC Region 13) and the Applications Review and Processing Team (MC 148) of the Water Quality Division at least forty-five (45) days prior to plant startup or anticipated discharge, whichever occurs first and prior to completion of each additional phase on Notification of Completion Form 20007.
8. In accordance with 30 TAC §319.9, a permittee that has at least twelve months of uninterrupted compliance with its bacteria limit may notify the commission in writing of its compliance and request a less frequent measurement schedule. To request a less frequent schedule, the permittee shall submit a written request to the TCEQ Wastewater Permitting Section (MC 148) for each phase that

includes a different monitoring frequency. The request must contain all of the reported bacteria values (Daily Avg. and Daily Max/Single Grab) for the twelve consecutive months immediately prior to the request. If the Executive Director finds that a less frequent measurement schedule is protective of human health and the environment, the permittee may be given a less frequent measurement schedule. For this permit, 1/quarter may be reduced to 1/6 months in the Interim I and Interim II phase; 1/month may be reduced to 1/quarter in the Final phase. **A violation of any bacteria limit by a facility that has been granted a less frequent measurement schedule will require the permittee to return to the standard frequency schedule and submit written notice to the TCEQ Wastewater Permitting Section (MC 148).** The permittee may not apply for another reduction in measurement frequency for at least 24 months from the date of the last violation. The Executive Director may establish a more frequent measurement schedule if necessary to protect human health or the environment.

9. The permittee shall provide verification of the completion of construction of the wastewater treatment facility prior to the expiration date of this permit. If complete construction of at least the Interim I Phase stage does not occur prior to the expiration date of this permit, the permittee shall not apply for permit renewal.

# **ATTACHMENT B**

TCEQ INTRA-AGENCY TRANSMITTAL MEMO

DATE: November 20, 2013

**TO:** FINAL DOCUMENTS TEAM LEADER  
OFFICE OF THE CHIEF CLERK  
BUILDING F, MC-105

**FROM:** Kathy Humphreys  
ENVIRONMENTAL LAW DIVISION  
BUILDING A, MC-173

**Attached:** Executive Director's Response to Comments

Application Information

Program Area (Air, Water or Waste): **Water**

Permit No. **WQ0014975001**

Name: **DHJB DEVELOPMENT, LLC**

Docket/CID Item # (if known): \_\_\_\_\_

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY  
2013 NOV 20 PM 2:14  
CHIEF CLERKS OFFICE

**OCC Action Required** (check applicable boxes)

Date stamp and return copy to above-noted ELD Staff Attorney and:

FOR ALL PROGRAM AREAS: (required only when changes needed to official agency mailing list)

- Update** the mailing list in your file with the attached contact names and addresses  
*Include corrected or additional names and addresses for mailing list*

FOR WASTE & WATER:

- Send Response to Comments Letter which solicits hearing requests and requests for reconsideration to the mailing list in your files

*For Waste and Water this would occur in all circumstances when comments have been received for 801 applications*

Or

- Send Response to Comments Letter and Motion to Overturn Letter which solicits motions to overturn to the mailing list in your files

*For Waste and Water this may occur when all comments have been withdrawn for 801 applications or when comments are received for applications that will not be set for agenda.*

FOR AIR (NSR only):

- Send RTC with response to comments letter which solicits contested case hearing requests and requests for reconsideration to the mailing list in your files

*For Air NSR applications this would occur only when there are pending contested case hearing requests (except no-increase renewals)*

- Set for commission agenda and send RTC with agenda setting letter

*This would occur when there are pending contested case hearing requests on a no-increase renewal and technical review is complete.*

- Hold until a commission agenda date is requested and then send RTC with the Agenda Setting Letter

*For Air applications this would occur when there are pending hearing requests on a no-increase renewal; but technical review is NOT complete. If this box is checked, ED staff must call the OCC Agenda Team Leader to arrange a specific agenda date.*

- Place RTC in File - no further action required by OCC

*For Air NSR applications this would occur when the matter is uncontested but comments were received, APD will send a copy with MTO letter*

- Other Instructions: \_\_\_\_\_

**TPDES PERMIT No. WQ0014975001**

**APPLICATION BY** § **BEFORE THE**  
**DHJB DEVELOPMENT, LLC** § **TEXAS COMMISSION ON**  
§ **ENVIRONMENTAL QUALITY**

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**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

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The Executive Director (ED) of the Texas Commission on Environmental Quality (the commission or TCEQ) files this Response to Public Comment (Response) on the DHJB Development, LLC's (DHJB) application for a major amendment to Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014975001, and the ED's preliminary decision. As required by 30 Texas Administrative Code (TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant public comments. The Office of the Chief Clerk received timely comment letters from James D. Bradbury on behalf of Ms. Patricia Lux Graham, Robert Fly Jr. on behalf of Geosource, Patricia Graham, and Margie Hastings. Additionally, Margie Hastings and an interested person submitted comments after the close of the comment period. This Response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our [website at www.tceq.state.tx.us](http://www.tceq.state.tx.us).

**BACKGROUND**

**Description of Facility**

DHJB has applied for a major amendment to Permit No. WQ0014975001 to authorize an increase in the discharge of treated domestic wastewater from a daily

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CHIEF CLERK'S OFFICE  
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average flow not to exceed 75,000 gallons per day to a daily average flow not to exceed 350,000 gallons per day. The major amendment would also convert the existing permit from disposal via subsurface drip irrigation (Texas Land Application Permit) to discharge into water in the state. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 75,000 gallons per day via a public access subsurface drip irrigation system with a minimum area of 750,000 square feet. This permit amendment does not include authorization for a subsurface drip irrigation system. The proposed wastewater treatment facility has not been constructed. The wastewater treatment facility will be located approximately 0.7 mile north of Farm-to-Market Road 1863 and 0.5 mile east of US Highway 281 in Comal County, Texas 78163.

The effluent limitations in the Interim I phase, Interim II phase and Final phase of the draft permit, based on a 30-day average, are 5 mg/l carbonaceous biochemical oxygen demand (5-day), 5 mg/l total suspended solids, 2 mg/l ammonia nitrogen, 0.5 mg/l total phosphorus, 126 CFU or MPN of *E. coli* per 100 ml and 4.0 mg/l minimum dissolved oxygen. The effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The treated effluent will be discharged to an unnamed tributary; then to Upper Cibolo Creek in Segment No. 1908 of the San Antonio River Basin. The unclassified receiving water use is limited aquatic life use for the unnamed tributary. The designated uses for Segment No. 1908 are primary contact recreation, public water supply, aquifer

protection and high aquatic life use. The effluent limitations in the draft permit will maintain and protect the existing instream uses.

### **Procedural Background**

TCEQ received the permit application on September 24, 2012 and declared it administratively complete on November 7, 2012. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published on November 21, 2012 in the *New Braunfels Herald-Zeitung*. The Notice of Application and Preliminary Decision (NAPD) was published on May 17, 2013 in the *New Braunfels Herald-Zeitung*. The combined Spanish language NORI/NAPD was published in the *La Voz* on August 30, 2013. The public comment period ended on September 30, 2013. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

### **Access to Rules, Laws and Records**

The following websites may be useful:

- Secretary of State website for all administrative rules: [www.sos.state.tx.us](http://www.sos.state.tx.us)
- TCEQ rules in Title 30 of the Texas Administrative Code: [www.sos.state.tx.us/tac/](http://www.sos.state.tx.us/tac/) (select "TAC Viewer" on the right, then "Title 30 Environmental Quality")
- Texas statutes: <http://www.statutes.legis.state.tx.us/>  
[www.capitol.state.tx.us/statutes/statutes.html](http://www.capitol.state.tx.us/statutes/statutes.html)
- TCEQ website: [www.tceq.state.tx.us](http://www.tceq.state.tx.us) (for downloadable rules in Microsoft Word or Adobe PDF formats, select "Rules, Policy, & Legislation," then "Rules and Rulemaking," then "Download TCEQ Rules")
- Federal rules in Title 40 of the Code of Federal Regulations:  
• <http://ecfr.gpoaccess.gov/cgi/t/text/textidx?tpl=/ecfrbrowse/Title40/40tab>

[o2.tpl.www.epa.gov/epahome/cfr40.htm](http://o2.tpl.www.epa.gov/epahome/cfr40.htm)

- Federal environmental laws: [www.epa.gov/epahome/laws.htm](http://www.epa.gov/epahome/laws.htm)

Commission records for this facility are available for viewing and copying at TCEQ's main office in Austin, 12100 Park 35 Circle, Building F, 1st Floor (Office of the Chief Clerk, for the current application until final action is taken). The application for this facility has been available for viewing and copying at the Bulverde City Hall, 30360 Cougar Bend, Bulverde, Texas, since publication of the NORI. The draft permit, 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.

## COMMENTS AND RESPONSES

### **COMMENT 1:**

Margie Hastings asked if the treated wastewater will be safe for cattle to drink. Patricia Graham stated that proposed DHJB discharge will negatively impact the cattle that currently graze on her property. Similarly, James Bradbury stated that the proposed discharge could harm livestock.

### **RESPONSE 1:**

As specified in the TSWQS, water in the state must be maintained to preclude adverse toxic effects on aquatic life, terrestrial life, livestock, and domestic animals resulting from contact, consumption of aquatic organisms, or consumption of water. The Commission does not have specific water-quality based effluent limitations for water consumed by livestock or wildlife. However, the TCEQ Water Quality Assessment Section has determined that the proposed permit for the facility meets the requirements of the TSWQS, which are established to protect human health, terrestrial and aquatic

life. Aquatic organisms are more sensitive to water quality components than terrestrial organisms. Therefore, wildlife and cattle would not be negatively impacted by the discharge from this facility if the Applicant maintains and operates the facility in accordance with TCEQ rules and the provisions in the proposed 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 Segment No. 1908 are primary contact recreation, public water supply, aquifer protection and high aquatic life use.<sup>1</sup>

The Water Quality Division has determined that the proposed 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 proposed 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.<sup>2</sup> The chlorine residual must be monitored five times per week by grab sample according to the proposed permit requirements.<sup>3</sup> Moreover, to ensure that the effluent is properly disinfected, the proposed permit contains effluent limits for bacteria.<sup>4</sup>

**COMMENT 2:**

Margie Hastings stated that she has a family member, who for health reasons should not contact chlorinated water.

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<sup>1</sup> See, Texas Surface Water Quality Standards, 30 TAC § 307.10(1), Appendix A; and Interoffice Memo from Standards Implementation Team to Municipal Permits Team, dated 1/11/13.

<sup>2</sup> DHJB draft permit, pages 2, 2a and 2b.

<sup>3</sup> DHJB draft permit, pages 2, 2a and 2b.

<sup>4</sup> DHJB draft permit, pages 2, 2a and 2b.

**RESPONSE 2:**

Chlorination of the treated effluent is required to provide adequate disinfection and reduce pathogenic organisms, therefore, TCEQ's rules provide “. . .disinfection in a manner conducive to the protection of both public health and aquatic life shall be achieved on all domestic wastewater which discharges into waters in the state.”<sup>5</sup> The ED does not mandate a particular method of disinfection, provided the disinfection method chosen is capable of achieving the disinfection limit in the permit. DHJB has opted to provide disinfection via chlorination. DHJB's proposed permit requires that the effluent from DHJB's wastewater treatment facility have a chlorine residual of at least 1.0 mg/L, but less than 4.0 mg/L.<sup>6</sup> To insure the disinfection is adequate the proposed permit also has an effluent limit for *E. coli* of 126 colony forming units (CFU) or most probable number (MPN).

**COMMENT 3:**

Patricia Graham indicated that item L, on page 11 of DHJB's administrative portion of the application is incorrect. DHJB marked Item L “n/a,” when, according to Ms. Graham, the effluent will travel off DHJB's property and enter her property. The effluent will then flow downstream to Ms. Graham's sister's property.

**RESPONSE 3:**

Item L, on page 11 of DHJB's administrative portion of the application is only applicable for effluent disposal sites (i.e. irrigation, subsurface drip irrigation, evaporation). It is not applicable for discharges to water in the state. According to the

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<sup>5</sup> 30 TAC § 309.3(g).

<sup>6</sup> DHJB draft permit, pages 2, 2a and 2b

application, the discharge from DHJB's wastewater treatment facility will be to an intermittent stream, which is an unnamed tributary of Upper Cibolo Creek.

**COMMENT 4:**

Patricia Graham indicated that item n, on page 13 of DHJB's administrative portion of the application is incorrect. According to Ms. Graham, the effluent will enter the right-of-way along both sides of FM 1863 before it reaches Cibolo Creek. Similarly James Bradbury stated that DHJB has not clearly defined the path the effluent will take to reach Upper Cibolo Creek.

**RESPONSE 4:**

According to DHJB's application, the effluent will be discharged "from the plant site to an unnamed tributary of Upper Cibolo Creek thence to Upper Cibolo Creek (segment 1908) of the San Antonio River Basin."<sup>7</sup>

**COMMENT 5:**

Patricia Graham indicated that the answers to items d and e on page 15 of DHJB's Technical Report of the application are incorrect.

**RESPONSE 5:**

DHJB indicated that the receiving water characteristics did not change within three miles downstream of the discharge (e.g., natural or man-made dams, ponds, reservoirs, etc); that there was no flow in the receiving stream during normal dry weather conditions. The TCEQ's water quality standards permit review indicates that the unnamed tributary has small pools as shown on the USGS topographical map and aerial maps. The unnamed tributary, after the confluence with a downstream tributary,

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<sup>7</sup> DHJB Application, Administrative Report, Page 11, Item 8a.

seems to have water within the banks in several areas; therefore, the unnamed tributary is intermittent with pools and is designated as supporting limited aquatic life use.

**COMMENT 6:**

Patricia Graham indicated that item 4a, on page 14 of DHJB's [technical report portion] of the application is incorrect. According to Ms. Graham, the unnamed tributary on her property is a dry creek, not a stream. Similarly, James Bradbury stated that the discharge would be to a pasture surface area that only receives normal rainfall runoff.

**RESPONSE 6:**

The Water Quality Standards Implementation Team uses the application information, US Geological Survey (USGS) topography maps, USGS gauge data (when available), aerial imagery, and photographs supplied by the applicant to make stream determinations. Based on the information supplied by DHJB the unnamed tributary is intermittent or "dry" for at least seven days per year. Topographical maps confirm the unnamed tributary's intermittent description, however, aerial imagery shows small pools located within the creek downstream of the discharge point. The pools appear to contain water and may support limited aquatic life; therefore, the Standards Implementation Team determined the unnamed tributary to be intermittent with perennial pools.

**COMMENT 7:**

Margie Hastings expressed concern over the negative impact to drinking water wells in the area. James Bradbury expressed concern that wells or spring-fed water supplies could be contaminated by the discharge.

**RESPONSE 7:**

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 DHJB's application, the proposed facility will comply with TCEQ's siting requirements.<sup>8</sup> The siting requirements do not allow wastewater treatment plant units to be located in a 100-year floodplain (unless the units are protected from inundation and damage that may occur during that flood event) or in wetlands. Additionally, a wastewater treatment plant unit must be located a minimum horizontal distance of 500 feet from public water wells and 250 feet from private water wells, springs, and similar sources of public drinking water. According to DHJB's application, there are no surface water intakes for domestic drinking water supplies within five miles downstream of the proposed outfall.

In addition, the proposed permit requires disinfection of the treated effluent before discharge.<sup>9</sup> Chlorination of the treated effluent is required to provide adequate disinfection and reduce pathogenic organisms. DHJB's proposed permit requires that its effluent be chlorinated in a chlorine contact chamber to a chlorine residual of 1.0

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<sup>8</sup> The siting requirements are found at 30 TAC § 309.13(a)-(d).

<sup>9</sup> DHJB draft permit, pages 2, 2a and 2b.

mg/l with a minimum detention time of 20 minutes. According to the proposed permit requirements, the chlorine residual must be monitored five times per week by grab sample.<sup>10</sup> Additionally, to ensure the effluent has been appropriately disinfected, it contains effluent limits for *E. coli*.<sup>11</sup>

**COMMENT 8:**

Margie Hastings expressed concern that the discharge of effluent through the proposed route will adversely impact her property value

**RESPONSE 8:**

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 9:**

Margie Hastings expressed concern that the discharge of effluent through the proposed route will cause extensive erosion. James Bradbury expressed concern that the discharge could cause erosion. Patricia Graham stated that she is greatly concerned about conservation.

**RESPONSE 9:**

The TPDES permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes, and coastal waters. A proposed facility's potential impact on erosion or soil conservation is outside the scope of the evaluation of a wastewater discharge permit application.

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<sup>10</sup> DHJB draft permit, pages 2, 2a and 2b.

<sup>11</sup> DHJB draft permit, pages 2, 2a and 2b.

**COMMENT 10:**

Margie Hastings expressed concern that the discharge of effluent through the proposed route will destroy the cemetery on the Johnson Ranch. Ms. Hastings also asked if the relatives of people buried in the cemetery had been notified.

**RESPONSE 10:**

If the permit is issued it does not grant DHJB the right to use private or public property for conveyance of wastewater along the discharge route. This includes property belonging to any individual, partnership, corporation or other entity. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is DHJB's responsibility to acquire the necessary property rights to use site of the planned treatment facility and the discharge route. Also, the proposed permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

**COMMENT 11:**

Margie Hastings stated that she would prefer the discharge pipe to run from the treatment facility through the applicant's property to the outfall. Similarly, James Bradbury commented that DHJB has not adequately explained or justified its proposed discharge route.

**RESPONSE 11:**

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.

**COMMENT 12:**

Robert Fly, Jr. expressed concern that access to the Geosource property is already limited when there is stormwater runoff and is concerned that the dry crossing will become a river, further limiting access to the Geosource property.

**RESPONSE 12:**

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.

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.

**COMMENT 13:**

Robert Fly, Jr. stated that the use and enjoyment of the property would be severely adversely impacted if the DHJB permit is approved. Patricia Graham indicated that the proposed discharge would adversely impact future uses of her property. Margie Hastings expressed concern that the effluent from the DHJB facility would adversely

affect her oak trees. James Bradbury stated that the discharge could prevent any meaningful use or enjoyment of Ms. Graham's property.

**RESPONSE 13:**

If the permit is issued, it does not grant DHJB the right to use private or public property for conveyance of wastewater along the discharge route. This includes property belonging to any individual, partnership, corporation or other entity. The permit does not authorize any invasion of personal rights or any violation of federal, state, or local laws or regulations. It is DHJB's responsibility to acquire the necessary property rights to use site of the planned treatment facility and the discharge route. Also, the draft permit does not limit the ability of nearby landowners to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

**COMMENT 14:**

Patricia Graham indicated that DHJB has not obtained permission to discharge effluent onto her property or her sister's property. Robert Fly, Jr. stated that the unnamed tributary is a privately owned, non-navigable dry creek bed. Patricia Graham also indicated that the discharge would be onto her property, which is not under the TCEQ's jurisdiction.

**RESPONSE 14:**

DHJB has applied for authorization to discharge wastewater under the TPDES program. 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 DHJB proposed 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.<sup>12</sup>

The proposed permit also provides that it is the permittee's responsibility to acquire property rights as may be necessary to use the discharge route.<sup>13</sup>

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."<sup>14</sup> The TWC prohibits the discharge of waste or pollution into or adjacent to water in the state without authorization from the Commission.<sup>15</sup> To implement this policy the TCEQ was given the authority to issue TPDES permits for the discharge of waste or pollutant into or adjacent to water in the state.<sup>16</sup> Historically, Texas courts have held that water in a watercourse is the property of the State, held in trust for the public.<sup>17</sup> Accordingly, the TCEQ is authorized to permit the discharge of treated domestic wastewater into water in the state.

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<sup>12</sup> DHJB draft permit, page 1. *See also*, 30 TAC § 305.122(b) and (c).

<sup>13</sup> DHJB draft permit, page 1. *See also*, 30 TAC § 305.122(b) and (c).

<sup>14</sup> TWC § 5.012.

<sup>15</sup> TWC § 26.121.

<sup>16</sup> TWC § 26.027.

<sup>17</sup> *Goldmith & Powell v State*, 159 S.W. 2d 534, 535 (Tex.Civ.App.-Dallas 1942).

The Court of Appeals considered whether the flow of 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*.<sup>18</sup> 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 discharge treated wastewater into a watercourse on privately-owned land pursuant to a state-issued permit.<sup>19</sup>

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.”<sup>20</sup> 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.<sup>21</sup>

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

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<sup>18</sup> *Domel v. City of Georgetown*, 6 S.W.3d, 349, 358 (Tex. App.-Austin 1999).

<sup>19</sup> *Domel v. City of Georgetown*, 6 S.W. 3d 349, 350 (Tex. App.-Austin 1999).

<sup>20</sup> *Domel v. City of Georgetown*, 6 S.W. 3d 349, 358 (Tex. App.-Austin 1999).

<sup>21</sup> *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 15**

James Bradbury commented that on Exhibit 4B (the buffer zone map), DJHB indicated “future creek re-routing.” Mr. Bradbury stated that it is unclear what the re-routing would entail, which creek would be re-routed, or how the creek re-routing would impact the surrounding properties. Mr. Bradbury stated that the true discharge route and its impacts should be evaluated.

**RESPONSE 15:**

According to the permit application, the discharge route is to an unnamed tributary thence to Upper Cibolo Creek, Segment 1908 of the Texas Surface Water Quality Standards. The TCEQ evaluated the discharge route as listed using USGS topography maps, aerial photography, the stated discharge route in the application, and information provided by the applicant. Exhibit 4B Buffer Zone Map is an additional resource submitted by the applicant. Exhibit 4B identifies the same discharge point the current application identifies, and therefore was not taken into consideration during this review. The buffer zone map is used to show how the applicant will comply with the requirements of 30 TAC Section 309.13(e). The Standards Implementation Team does not determine the discharge route using this resource.

If the permit is issued, and DHJB then chooses to use a different discharge route, it must apply for a major amendment to alter or re-route the discharge route description in the permit. If DHJB chooses to use a different discharge route before the permit is

issued, it will be required to amend its application and additional notice will be required.

**COMMENT 16:**

James Bradbury stated that the newly approved 303(d) list includes both chloride and bacteria for Segment 1908. Furthermore he recommended that the ED perform another assessment of the impact of the discharge on Upper Cibolo Creek, and add appropriate effluent limits to DHJB's permit.

**RESPONSE 16:**

Upper Cibolo Creek in Segment 1908 is currently listed on the State's inventory of impaired and threatened waters, the 2010 Clean Water Act Section 303(d) list. The listing is specifically for elevated levels of bacteria. Based on model results, the proposed effluent limitations of 5 mg/l carbonaceous biochemical oxygen demand (5-day), 5 mg/l total suspended solids, 2 mg/l ammonia nitrogen, 0.5 mg/l total phosphorus, 126 CFU or MPN of *E. coli* per 100 ml and 4.0 mg/l minimum dissolved oxygen (DO) is appropriate to maintain the 3.0 mg/l DO criterion of the unnamed tributary. The treated effluent shall contain a chlorine residual of at least 1.0 mg/l and shall not exceed a chlorine residual of 4.0 mg/l after a detention time of at least 20 minutes based on peak flow.

The ED has made the preliminary determination that the application meets all the technical requirements. The TCEQ agrees that chloride is a listed constituent on the 2012 Texas Integrated Report 303(d) list. Currently the listing is a category 5c which means additional data and information is being collected before a TMDL is scheduled. Using the information listed in the application, the size of the discharge and nature of

the discharge, the ED does not anticipate any adverse impact to the receiving stream resulting from the proposed discharge. The permit may be re-evaluated for permit limits in the future upon any permit action submitted, or rules implemented by the TCEQ.

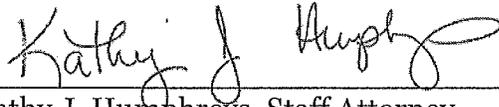
**CHANGES MADE TO THE DRAFT PERMIT IN RESPONSE TO COMMENT**

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

Respectfully submitted,  
Texas Commission on Environmental Quality

Zak Cover, Executive Director

Robert Martinez, Director  
Environmental Law Division



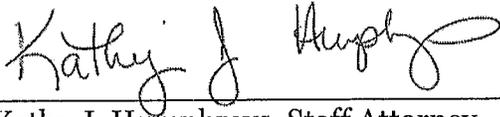
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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

I certify that on November 20, 2013, the "Executive Director's Response to Public Comment" for Permit No. WQ0014975001 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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Kathy J. Humphreys, Staff Attorney  
Environmental Law Division  
State Bar No. 24006911

# **ATTACHMENT C**



# Compliance History Report

**PUBLISHED** Compliance History Report for CN604156356, RN104912704, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

<b>Customer, Respondent, or Owner/Operator:</b>	CN604156356, DHJB Development, LLC	<b>Classification:</b> UNCLASSIFIED	<b>Rating:</b> -----
<b>Regulated Entity:</b>	RN104912704, JOHNSON RANCH WWTP	<b>Classification:</b> UNCLASSIFIED	<b>Rating:</b> -----
<b>Complexity Points:</b>	2	<b>Repeat Violator:</b> NO	
<b>CH Group:</b>	08 - Sewage Treatment Facilities		
<b>Location:</b>	3695 FM 1863 BULVERDE TX 78163 COMAL, TX, COMAL COUNTY		
<b>TCEQ Region:</b>	REGION 13 - SAN ANTONIO		
<b>ID Number(s):</b>	WASTEWATER PERMIT WQ0014975001		
<b>Compliance History Period:</b>	September 01, 2008 to August 31, 2013	<b>Rating Year:</b> 2013	<b>Rating Date:</b> 09/01/2013
<b>Date Compliance History Report Prepared:</b>	March 12, 2014		
<b>Agency Decision Requiring Compliance History:</b>	Permit - Issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit.		
<b>Component Period Selected:</b>	September 01, 2007 to August 31, 2012		
<b>TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.</b>			
<b>Name:</b>	TCEQ Staff Member	<b>Phone:</b>	(512) 239-1000

## Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

## Components (Multimedia) for the Site Are Listed in Sections A - J

### **A. Final Orders, court judgments, and consent decrees:**

N/A

### **B. Criminal convictions:**

N/A

### **C. Chronic excessive emissions events:**

N/A

### **D. The approval dates of investigations (CCEDS Inv. Track. No.):**

N/A

### **E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

**F. Environmental audits:**

N/A

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# **ATTACHMENT D**

# DHJB Development, LLC

## WQ0014975001

Map Requested by TCEQ Office of Legal Services  
for Commissioners' Agenda

### Requesters

1. Patricia Lux Graham



Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087

February 10, 2014

Projection: Texas Centric Mapping System  
Albers (TCMS-A), meters  
Scale 1:19,822

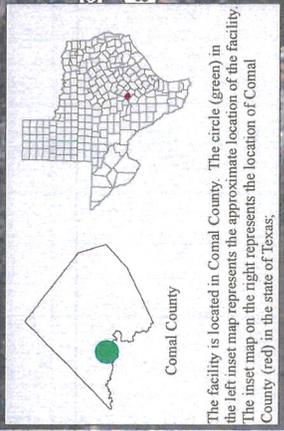
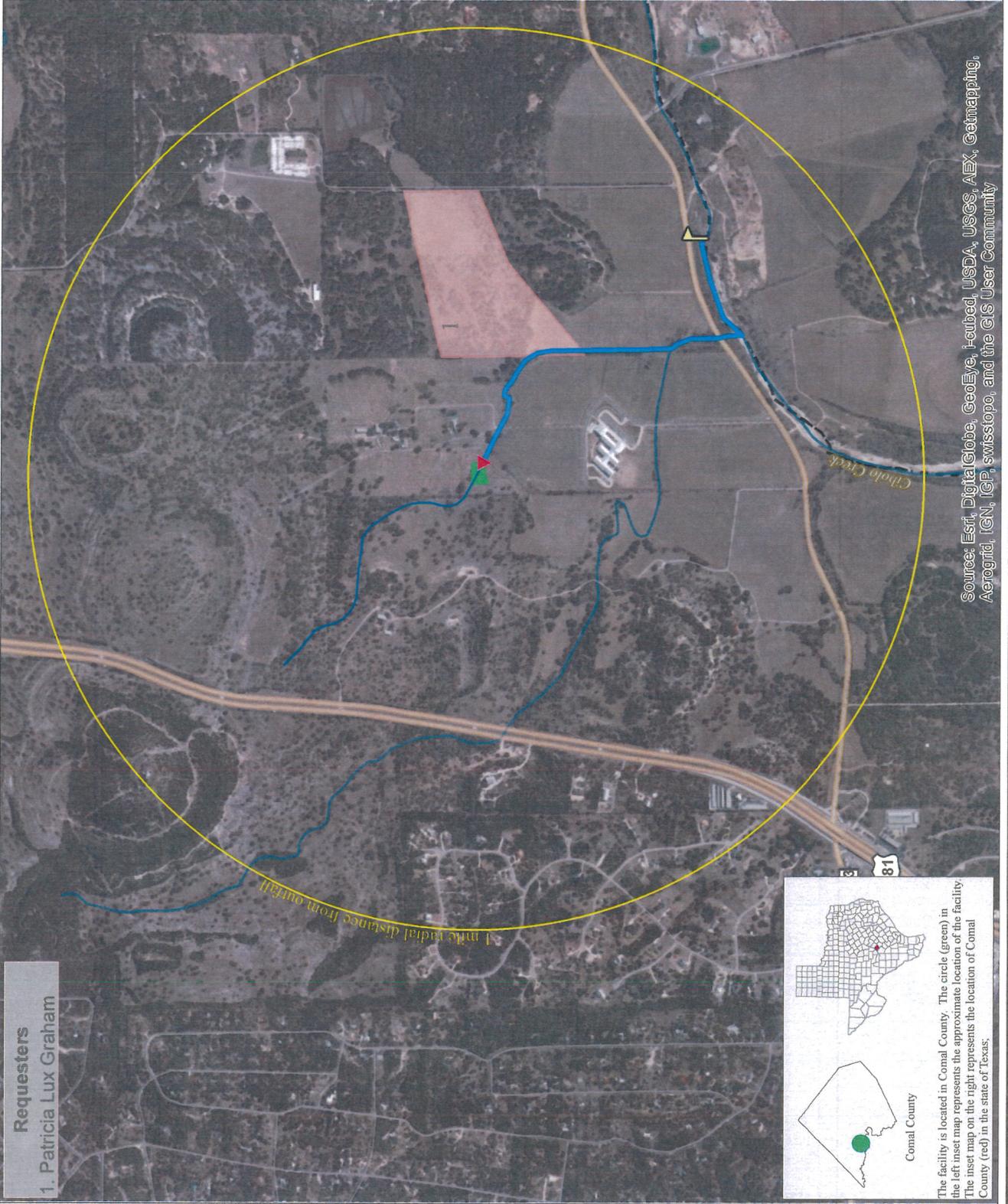
- Facility
- Outfall
- 1 stream mile downstream from outfall
- Discharge Route
- Watercourse
- Buffer
- Requestor (keyed)
- County Boundary



Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The background imagery of this map is from the current Microsoft Bing map service, as of the date of this map.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

C. Schaefer CW-1348



Source: Esri, DigitalGlobe, GeoEye, Earthstar, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community