

# SHANNON GRACEY

SHANNON, GRACEY, RATLIFF & MILLER, LLP

Cheryl L. Coon  
Direct Dial: (817) 882-7620

Email: ccoon@shannongracey.com

October 11, 2012

MWD  
787-63

**Via Certified Mail & Email**

Chief Clerk of TCEQ  
Bridget Bohac  
TCEQ  
MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

**Via Certified Mail**

Laurie J. Lancaster  
Application Review & Processing Section  
MC-148  
Water Quality Division  
P.O. Box 13087  
Austin, Texas 78711-3087

**Via Certified Mail**

Alicia Diehl, PHD  
Public Drinking Water Section  
Water Supply Division  
TCEQ - MC-155  
P.O. Box 13087  
Austin, Texas 78711-3087

REVIEWED

OCT 17 2012

By AS

H

CHIEF CLERKS OFFICE

2012 OCT 17 AM 9:54

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

Re: **Opposition to Permit Renewal - New Permit No.: WQ0015010001; Request for Contested Case Hearing**

To Whom It May Concern:

We represent Haywire Ranch, the owner of adjacent property where Abraxas formerly discharged its treated effluent. As you know, the Abraxas permit **expired effective December 1, 2009**. By letter dated April 29, 2010, Abraxas and its counsel were informed that there is no ongoing right to continue to use the Haywire property for discharge of effluent. Abraxas submitted an application for a new permit July 20, 2010, which our client opposed and which was **not** finalized. **Now, almost three (3) years after operating without a permit in blatant disregard of TCEQ rules, Abraxas submits a new application. Our client, Haywire Ranch, opposes granting of this permit and hereby requests a contested case hearing.**

As we did in 2010, we note that Abraxas has failed repeatedly to meet state standards with regard to its public water system and public sewer system as noted by the following **partial** litany of violations below. **Moreover, it has been operating without a permit for almost three (3) years.** Promised upgrades and renovations never occur. This is an egregious situation where parties are allowed to blatantly disregard permitting requirements.

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OCT 16 2012

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October 11, 2012

Page 2

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- Abraxas filed a new permit application in 2010 (see attached letter) but failed to follow through.
- July 29, 2010 – complaint related to sanitary sewer overflow
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- May 24, 2010 – operating without a permit
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- May 27, 2009 – letter from TCEQ noting violation related to monitoring and reporting requirements for Disinfectant Level Quarterly Operating Report
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Based on the above, and Abraxas' **continued operation without a permit**, we note our client's strong opposition to the new permit application. We have requested TCEQ records since 2010 and have not received them yet. We will update this opposition letter once those records are received.

We are concerned that effluent now is entering waters of the state and sources used as drinking waters. Given the lack of compliance, we are concerned that the weekly testing will be done and done correctly.

The facility's history suggests compliance with the permit terms will not be a priority.

Abraxas appears to be incompetent in their operations and financially inadequate to properly operate the facilities. There are concerns for their customers and the water quality in the receiving stream. Our client not only opposes the permit, but feels that the system should be placed in receivership.

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OCT 16 2012

Water Quality Applications Team

October 11, 2012  
Page 3

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If you have any questions, please do not hesitate to call.

Yours very truly,



Cheryl L. Coon

CLC/lrg

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cc: **Via Regular Mail**  
L. Allen Hodges III  
The Hodges Companies  
Coyote Petroleum  
306 W. 7<sup>th</sup> Street, Suite 701  
Ft. Worth, Texas 76102

**Via Certified Mail**  
Sid Slocum, TCEQ Region 4 Water Program Manager  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

**RECEIVED**

OCT 16 2012

Water Quality Applications Team

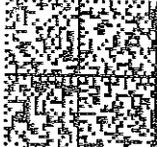
**SHANNON GRACEY**  
SHANNON, GRACEY, RATLIFF, & MILLER, LLP

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CHIEF CLERKS OFFICE

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*OCC MC: 105*

~~Laarrie J. Lancaster~~  
Application Review & Processing Section  
MC-148  
Water Quality Division  
P.O. Box 13087  
Austin, Texas 78711-3087

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OCT 15 2012

TCEQ MAIL CENTER  
AR

777 Main Street Suite 3800 | Fort Worth, Texas 76102-5304



# SHANNON GRACEY

SHANNON, GRACEY, RATLIFF & MILLER, LLP

Cheryl L. Coon  
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Email: ccoon@shannongracey.com

MWD  
70763

October 11, 2012

**Via Certified Mail & Email**

Chief Clerk of TCEQ  
Bridget Bohac  
TCEQ  
MC-105  
P.O. Box 13087  
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Alicia Diehl, PHD  
Public Drinking Water Section  
Water Supply Division  
TCEQ - MC-155  
P.O. Box 13087  
Austin, Texas 78711-3087

**REVIEWED**

OCT 17 2012

By BP

H

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
2012 OCT 15 PM 2:51  
CHIEF CLERKS OFFICE

Re: Opposition to Permit Renewal - New Permit No.: WQ0015010001; Request for Contested Case Hearing

To Whom It May Concern:

We represent Haywire Ranch, the owner of adjacent property where Abraxas formerly discharged its treated effluent. As you know, the Abraxas permit **expired effective December 1, 2009**. By letter dated April 29, 2010, Abraxas and its counsel were informed that there is no ongoing right to continue to use the Haywire property for discharge of effluent. Abraxas submitted an application for a new permit July 20, 2010, which our client opposed and which was **not** finalized. **Now, almost three (3) years after operating without a permit in blatant disregard of TCEQ rules, Abraxas submits a new application. Our client, Haywire Ranch, opposes granting of this permit and hereby requests a contested case hearing.**

As we did in 2010, we note that Abraxas has failed repeatedly to meet state standards with regard to its public water system and public sewer system as noted by the following **partial** litany of violations below. **Moreover, it has been operating without a permit for almost three (3) years.** Promised upgrades and renovations never occur. This is an egregious situation where parties are allowed to blatantly disregard permitting requirements.

Handwritten initials: CW

October 11, 2012

Page 2

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Based on the above, and Abraxas' **continued operation without a permit**, we note our client's strong opposition to the new permit application. We have requested TCEQ records since 2010 and have not received them yet. We will update this opposition letter once those records are received.

We are concerned that effluent now is entering waters of the state and sources used as drinking waters. Given the lack of compliance, we are concerned that the weekly testing will be done and done correctly.

The facility's history suggests compliance with the permit terms will not be a priority.

Abraxas appears to be incompetent in their operations and financially inadequate to properly operate the facilities. There are concerns for their customers and the water quality in the receiving stream. Our client not only opposes the permit, but feels that the system should be placed in receivership.

October 11, 2012  
Page 3

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If you have any questions, please do not hesitate to call.

Yours very truly,



Cheryl L. Coon

CLC/lrg

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cc: **Via Regular Mail**  
L. Allen Hodges III  
The Hodges Companies  
Coyote Petroleum  
306 W. 7<sup>th</sup> Street, Suite 701  
Ft. Worth, Texas 76102

**Via Certified Mail**  
Sid Slocum, TCEQ Region 4 Water Program Manager  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

**SHANNON GRACEY**  
SHANNON, GRACEY, RATLIFF, & MILLER, LLP

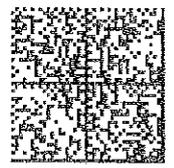
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7871133087 8012





September 20, 2010

Page 2

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- Abraxas filed a new permit application in 2010 (see attached letter) but **failed to follow through**.
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Based on the above, and Abraxas' **continued operation without a permit**, we note our client's strong opposition to the June 28, 2011 permit application.

**We are extremely concerned about the alternate/current plan to deal with effluent since Abraxas is not permitted to discharge onto Haywire Ranch.**

Abraxas appears to be incompetent in their operations and financially inadequate to properly operate the facilities. There are concerns for their customers and the water quality in the receiving stream. Our client not only opposes the permit, but feels that the system should be placed in receivership.

Finally, to be clear, any and all past permission to discharge to Haywire Ranch and/or irrigate **has expired** and Abraxas was expressly notified of that fact on April 24, 2010. Any further discharges to the 20 acres owned by Haywire Ranch are not authorized and will be treated as a trespass. We will be reviewing the permit application to determine Abraxas' plan for discharges if indeed the irrigation equipment has been removed. We will submit detailed comments after our review.

September 20, 2010  
Page 3

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If you have any questions, please do not hesitate to call.

Yours very truly,



Cheryl L. Coon

CLC/lrg

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cc: **Via Certified Mail**  
Ms. Laura Farhood Warren  
7921 Main Street  
Smithfield, TX 76180

**Via Certified Mail**  
Mrs. Evelyn Freeman Farhood  
7921 Main Street  
Smithfield, TX 76180

**Via Certified Mail**  
Sid Slocum, TCEQ Region 4 Water Program Manager  
2309 Gravel Drive  
Fort Worth, Texas 76118-6951

**Via Regular Mail**  
L. Allen Hodges III  
The Hodges Companies  
Coyote Petroleum  
306 W. 7<sup>th</sup> Street, Suite 701  
Ft. Worth, Texas 76102

COPY

Abraxas Corporation  
7921 Main St.  
Smithfield, TX 76182  
817-656-3636  
817-788-9531 Fax

July 20, 2010

Certified Mail Return Receipt Requested #7007-3020-0001-2427-3585

Executive Director  
Application Review and Processing Team  
TCEQ  
Building F, Room 2101  
12100 Park 35 Circle  
Austin, TX 78753

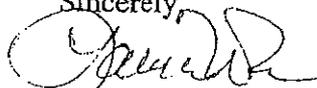
RE: Resubmission of Permit Renewal Package  
Abraxas Corporation WWPT  
Permit # 11086-001

Dear Sir,

Please find enclosed one original and four copies of the application for our permit renewal. This was originally submitted on November 27, 2009. However upon speaking to Mr. Eric Agnew of the Dallas -Fort Worth Regional office on another matter, he advised me that nothing was showing in his system that the permit was in renewal status.

At this time I am resubmitting the package. If you have any questions regarding this application or need further information please feel free to contact me. The office number is 817-656-3636, Fax line 817-788-9531 and my cell phone is 817-808-7555.

Sincerely,



Laura Farhood Warren  
Abraxas Corporation

Enclosure

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2011 SEP 22 PM 2: 37  
CHIEF CLERKS OFFICE

**SHANNON GRACEY**  
SHANNON, GRACEY, RATLIFF, & MILLER, LLP

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TEXAS  
COMMISSION  
ENVIRONMENTAL  
QUALITY

SEP 22 PM 2:36

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SEP 22 2011

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Bridget Bohac  
TCEQ  
MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

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777 Main Street Suite 3800 | Fort Worth, Texas 76102-5304 727.133027 2012





the city may extend those laws to the ETJ.<sup>2</sup> Under sections 212.002 and 212.003, the City has authority to regulate development in its ETJ, and that authority includes the power to regulate the design criteria of utilities.<sup>3</sup>

Thus, Fort Worth's specific governmental interests are affected by the application. TCEQ's procedural rules expressly state that local governmental entities with authority under state law over issues raised by the application may be considered affected persons.<sup>4</sup>

In addition, the application ultimately discharges into Lake Worth which is one of the City's public water supply sources and is located within the incorporated limits of the City. According to information contained in the application and statements of TCEQ staff reviewing this application, the distance between the subject wastewater treatment plant and Lake Worth is estimated to be approximately 4.7 to 5.4 streambed miles.

**Disputed Issues of Fact and Law.** The following disputed issues of fact or law necessitate a contested case hearing in this case and also show how Fort Worth would be adversely affected by the proposed permit:

1. Whether the State's Regionalization Policy justifies a permit provision requiring tie-on to the City's sewer system when the City annexes the Hilltop Village subdivision. The applicant has not fully considered the need and regional treatment options for wastewater treatment, including the availability of existing or proposed area-wide or regional waste collection, treatment, and disposal systems as required by Texas Water Code § 26.0282. Because the Hilltop Village subdivision is located within Fort Worth's ETJ, at some point in the foreseeable future Fort Worth will annex the Hilltop Village subdivision. The City would then be required to provide wastewater services to the Hilltop Village subdivision through construction of lift stations connected to its municipal wastewater collection and treatment system. Moreover, the proliferation of small package sewage treatment plants violates the State's policy goal of achieving regionalization of sewer utility services. Therefore, Fort Worth requests that any permit issued in this matter include the following new provision to be inserted as Operational Requirement 8.d. on page 15 of the draft permit:

*"In the event the City of Fort Worth annexes any portion of the Hilltop Village subdivision, the permittee shall submit plans to the City of Fort Worth within 90 days of the date of annexation for connecting the permittee's wastewater collection system to the*

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safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality." TEX. LOC. GOV'T CODE ANN. § 212.002. Fort Worth has adopted such rules.

<sup>2</sup> Section 212.003(a) provides, "The governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Section 212.002 . . ." TEX. LOC. GOV'T CODE ANN. § 212.003. Fort Worth's rules extend to its ETJ.

<sup>3</sup> *City of Lucas v. North Texas Municipal Water District*, 724 S.W.2d 811, 823 (Tex. App.—Dallas 1986, writ ref'd n.r.e.).

<sup>4</sup> 30 TEX. ADMIN. CODE § 55.203(b) and (c)(6).

*City's sewer system, in conformity with all applicable City of Fort Worth ordinances and policies concerning wastewater utility construction and installation. Permittee shall implement such plans upon their approval in writing by the City of Fort Worth."*

2. Whether the distance between the Hilltop Village wastewater plant outfall and Lake Worth is less than 5 stream miles. The draft permit specifies effluent discharge limits of 20 mg/l for 5-day biochemical oxygen demand (BOD<sub>5</sub>), 20 mg/l for total suspended solids (TSS), and 2 mg/l for dissolved oxygen (DO). However, the TCEQ rules for wastewater discharges into the Lake Worth watershed within five stream miles upstream of the pool level of Lake Worth require effluent discharge limits of 10 mg/l BOD<sub>5</sub>, 15 mg/l TSS, and 4 mg/l DO, plus the use of filtration to supplement suspended solids removal.<sup>5</sup>

TCEQ staff initially believed that the distance from the wastewater plant to Lake Worth was 5.6 stream miles, then refined that to an estimate of 4.7 stream miles, then again revised that based on the applicant's contour map submittal to an estimate of 5.4 stream miles. **Exhibit "B"** attached hereto are TCEQ staff memoranda of these differing distance estimates. From this record of flip-flopping estimates, it is clear that a hearing is needed to resolve the issue and determine the actual stream mile distance between the wastewater treatment plant discharge point and Lake Worth at a pool elevation of 594.3 feet msl. If the true distance is five stream miles or less, then the permit is required to have effluent discharge limits of 10 mg/l BOD<sub>5</sub>, 15 mg/l TSS, and 4 mg/l DO, plus a requirement for use of filtration to supplement suspended solids removal.

The Executive Director's Response to Comments ("RTC") indicates that the estimate of 5.4 stream miles is based on 2-foot topographic contours available from the North Central Texas Council of Governments ("NCTCOG"). However, the 2-foot contours shown on the NCTCOG map and the original mapping data are subject to differing interpretations by mapping experts and the City should be allowed to show that the 5.4-mile distance estimate based on the NCTCOG map is overstated.

3. Whether the Hilltop Village wastewater plant is capable of achieving the permitted BOD<sub>5</sub> Limit. Even if the permit is issued with a BOD<sub>5</sub> limit of 20 mg/l as proposed in the draft permit, it is clear from the operational history of the Applicant's wastewater plant that the plant is not capable of achieving that level of treatment. According to the Executive Director's Statement of Basis and Technical Summary, the Applicant's Monthly Effluent Report data for the period January 2011 through December 2011 shows an average BOD<sub>5</sub> of 34 mg/l. In light of the age of the treatment plant, its poor compliance history, and its record of lax operational control, it is not surprising that the plant has not been able to come close to achieving BOD<sub>5</sub> effluent quality of 20 mg/l, much less a possibly required effluent quality of 15 mg/l. Moreover, the Applicant has had to seek, and did obtain, TCEQ staff approval of at least three variances from normally applicable TCEQ design

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<sup>5</sup> 30 TEX. ADMIN. CODE §§ 311.61 – 311.63.

December 23, 2013

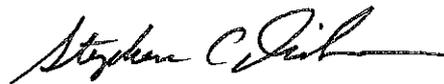
Page 4

criteria. TCEQ should not issue a water quality discharge permit for a wastewater plant known to be incapable of meeting the permitted limits unless some further demonstration is made by the Applicant showing how the permitted limits will be met through installation of updated facilities, backup equipment, and contingency plans.

Fort Worth will withdraw its request for contested case hearing if the final permit is issued with the additional permit provision set forth in disputed issue No. 1 above.

If you have any questions or desire additional information, please feel free to contact me at any time.

Sincerely,

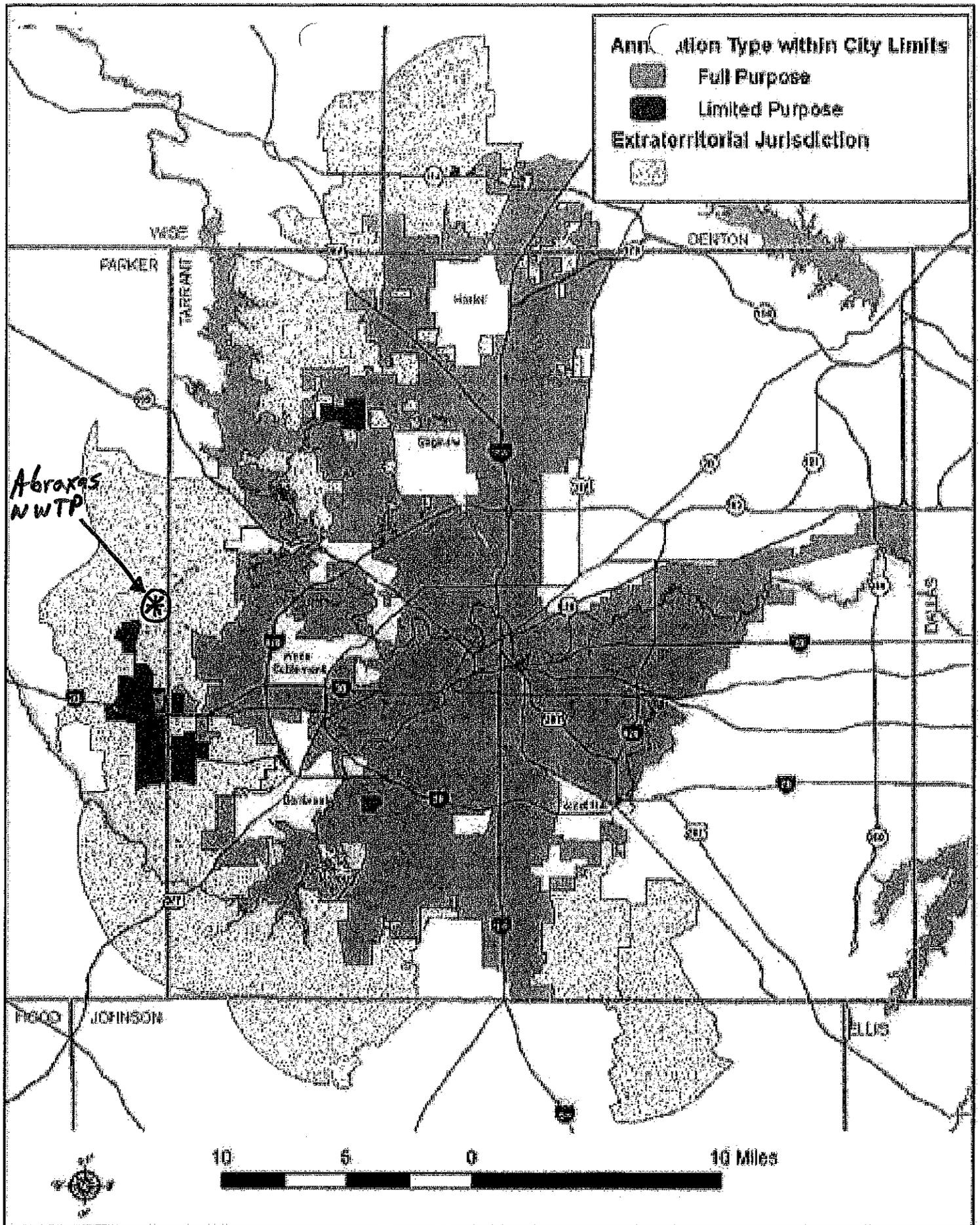


Stephen C. Dickman  
Outside Counsel to the City of Fort Worth

Enc.: Exhibits "A" and "B"

cc: Mr. Frank Crumb, Director Fort Worth Water Department  
Mr. Richard Talley, City of Fort Worth Regulatory / Environmental Coordinator  
Ms. Christa Reynolds, City of Fort Worth Legal Department

# **EXHIBIT “A”**



The light gray shading on the map above shows Fort Worth's city limits, with the dark gray shading identifying limited-purpose annexation areas. The area shaded with dots is Fort Worth's ETJ,

# **EXHIBIT “B”**

## TCEQ Interoffice Memorandum

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**To:** Municipal Permits Team  
Wastewater Permitting Section

**From:** *MM* Mark A. Rudolph, P.E.  
Water Quality Assessment Team  
Water Quality Assessment Section

**Date:** July 17, 2012

**Subject:** Abraxas Corporation New Wastewater Permit (#15010-001, TX0133116)  
Discharge to a tributary of Lake Worth (Segment 0807)

**This memo supersedes the one issued June 4, 2012.**

The applicant has provided new elevation information that enables a more detailed and accurate estimate of the distance between this discharge and the normal pool elevation of Lake Worth (Segment 0807). Using these data, the distance from this discharge and Segment 0807 is estimated to be approximately 5.4 miles. Since the distance is greater than 5 stream miles, the effluent limits prescribed in the watershed rule for Segment 0807 **do not apply** to this discharge.

The applicant is requesting an effluent flow for this facility of 0.020 MGD. A dissolved oxygen analysis of the discharge was conducted using a Continuously Stirred Tank Reactor (CSTR) model of the immediate receiving waters (man-made pond) and an uncalibrated QUAL-TX model for the waters downstream of the pond. No base flow was assigned to the receiving waters in the analysis.

Based on model results, the effluent set recommended in the May 25, 2012 modeling memo is anticipated to be adequate. These limits include **20 mg/L BOD<sub>5</sub> and 2 mg/L DO (modeled with 12 mg/L Ammonia-Nitrogen)**. These limits are predicted to be adequate to ensure that the dissolved oxygen level in the receiving waters will be maintained above the criteria (man-made pond, 3 mg/L; unnamed drainage and tributary, 2 mg/L; Haywire Lake #2, 5 mg/L).

Coefficients and kinetics used in the model are a combination of standardized default and estimated values. The results of this evaluation can be reexamined upon receipt of information that conflicts with the assumptions employed in this analysis.

Segment 0807 is not currently listed on the State's inventory of impaired and threatened waters (the 2010 Clean Water Act Section 303(d) list).

An approved TMDL entitled *One Total Maximum Daily Load for Polychlorinated Biphenyls (PCBs) in Fish Tissue in Lake Worth* is available for this Segment (project # 63)

The effluent limits recommended above have been reviewed for consistency with the State of Texas Water Quality Management Plan (WQMP). The proposed limits are not contained in the approved WQMP. However, these limits will be included in the next WQMP update. A Waste Load Evaluation has not been prepared for Segment 0807.

## TCEQ Interoffice Memorandum

---

**To:** Municipal Permits Team  
Wastewater Permitting Section

**From:** *MMW* Mark A. Rudolph, P.E.  
Water Quality Assessment Team  
Water Quality Assessment Section

**Date:** June 4, 2012

**Subject:** Abraxas Corporation New Wastewater Permit (#15010-001, TX0133116)  
Discharge to a tributary of Lake Worth (Segment 0807)

**This memo supersedes the one issued May 25, 2012.**

During the ERC Review of the draft permit for this facility, a more accurate assessment of the distance between this discharge and Lake Worth (Segment 0807) revealed that the Lake Worth watershed Rule applies to this facility. Previously, the distance to Segment 0807 was estimated to be approximately 5.6 miles and the more refined estimate is 4.7 miles. Therefore, the minimum effluent limits prescribed in the rule take precedence over those derived during the modeling analysis of this facility.

The applicant is requesting an effluent flow for this facility of 0.020 MGD. A dissolved oxygen analysis of the discharge at the reduced flow was conducted using a Continuously Stirred Tank Reactor (CSTR) model of the immediate receiving waters (man-made pond) and an uncalibrated QUAL-TX model for the waters downstream of the pond. The facility is located in Parker County. No base flow was assigned to the receiving waters in the analysis.

Based on model results, an effluent set of 20 mg/L BOD<sub>5</sub>, modeled with 12 mg/L Ammonia-Nitrogen and 2 mg/L DO is predicted to be necessary to ensure that the dissolved oxygen level in the receiving waters will be maintained above the criteria (man-made pond, 3 mg/L; unnamed drainage and tributary, 2 mg/L; Haywire Lake #2, 5 mg/L). However, the Lake Worth Watershed rule requires an effluent set of **10 mg/L BOD<sub>5</sub>, 15 mg/L TSS, and 4 mg/L DO**. In addition, the rule contains a requirement for filtration.

Coefficients and kinetics used in the model are a combination of standardized default and estimated values. The results of this evaluation can be reexamined upon receipt of information that conflicts with the assumptions employed in this analysis.

Segment 0807 is not currently listed on the State's inventory of impaired and threatened waters (the 2010 Clean Water Act Section 303(d) list).

An approved TMDL entitled *One Total Maximum Daily Load for Polychlorinated Biphenyls (PCBs) in Fish Tissue in Lake Worth* is available for this Segment (project # 63)

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## Mark Rudolph

---

**From:** Terry Graham [terry@abaxial.net]  
**Sent:** Friday, July 06, 2012 8:58 AM  
**To:** Mark Rudolph  
**Subject:** RE: Distance to lake Worth from the ABRAXAS treatment discharge  
**Attachments:** USGS-120705 Discharge Route to Lake-a.pdf; DFWMaps-120705 Discharge route to lake.pdf

Mark,

Here they are.

*Terry*

Abaxial, Inc.  
Terrence A. Graham, PE, RPLS  
817-228-9501

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**From:** Mark Rudolph [mailto:mark.rudolph@tceq.texas.gov]  
**Sent:** Friday, July 06, 2012 7:11 AM  
**To:** terry@abaxial.net  
**Subject:** RE: Distance to lake Worth from the ABRAXAS treatment discharge

Terry,

The maps you referenced did not come through.

Please resend them.

Thanks,

Mark Rudolph, P.E.  
512-239-4534

---

**From:** Terry Graham [mailto:terry@abaxial.net]  
**Sent:** Thursday, July 05, 2012 5:01 PM  
**To:** Mark Rudolph  
**Cc:** 'Laura Warren'; lfabraxas@aol.com  
**Subject:** Distance to lake Worth from the ABRAXAS treatment discharge

Mark,

Thanks for your time today. The City of Fort Worth has the conservation level at 594.1 which is essentially the same elevation the TCEQ is using. My measurement was to approximately elevation 594.

I have attached a copy of the USGS map we submitted with the distance from the treatment plant to the confluence with Silver Creek and to the intersection with Silver Creek Road shown. I have also attached a pdf printout of the NCTCOG map with contours shown from Silver Creek Road to Elevation 594. The distance is 2,130 feet.

My distances on the USGS map are from zooming way in and tracing the waterway as plotted. I may have more detail on the meanderings than you would be able to pick up from a paper map.

Let me know if you have any concerns that I have not addressed.



U.S. DEPARTMENT OF THE INTERIOR  
U. S. GEOLOGICAL SURVEY

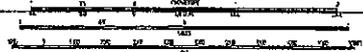


SPRINGTOWN SE QUADRANGLE  
TEXAS  
7.5-MINUTE SERIES



Produced by the United States Geological Survey  
Topographic Series of 1:24,000  
Scale Quadrangle Series of 1:24,000  
with latest 1:50,000 and  
1:250,000 Series  
U.S. Geological Survey, Reston, VA 20192  
2000

SCALE 1:24 000

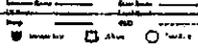


LENGTH (FEET) IN PART

This map was produced in accordance with section 5.10 of the  
USGS Manual of Style, 1.1 edition, Washington, D.C., 1987.  
A revision of the contour data was made to show data within 6.6 ft  
of the true elevation.



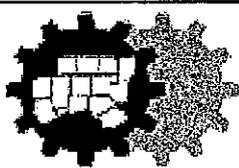
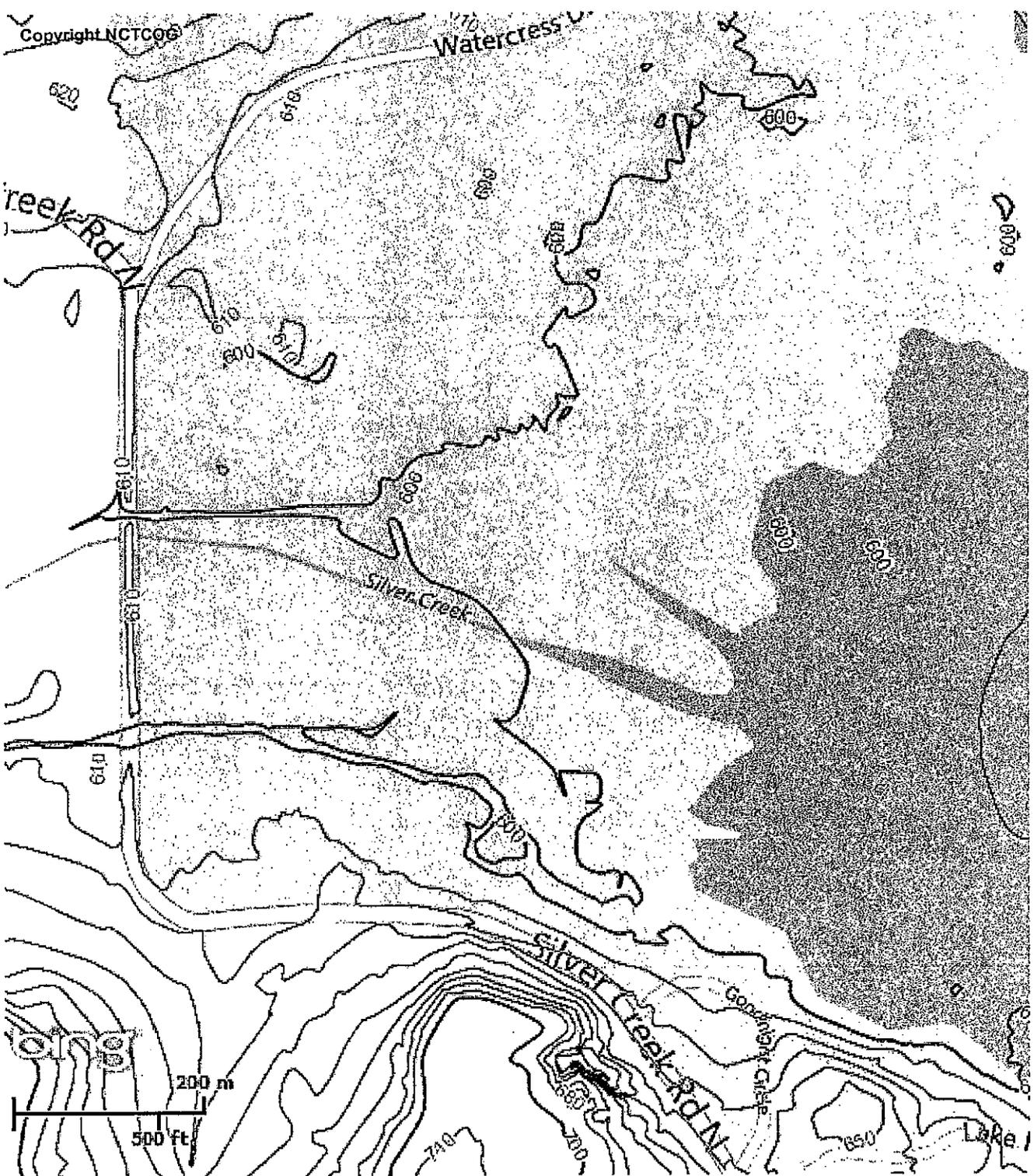
ROAD CLASSIFICATION



HYDROGRAPHIC		
Water	Blue	Shaded
Canal	Blue	Shaded
Swamp	Blue	Shaded
Marsh	Blue	Shaded
Wetland	Blue	Shaded

SPRINGTOWN SE, TX  
2010

Item 5g Domestic Admin Report 1.0  
Abraxas Corporation  
WQ 11086-001



North Central Texas  
Council of Governments

My Map  
DFWMaps.com

**DISCLAIMER**  
This data has been compiled for NCTCOG. Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data.



# KELLY HART

STEPHEN C. DICKMAN  
stephen.dickman@kellyhart.com

TELEPHONE: (512) 495-6413  
FAX: (512) 495-6401

November 2, 2012

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

MWD  
78711-3087

REVIEWED

NOV 05 2012

By AP

H

Re: Application of Abraxas Corporation for Proposed Permit No. WQ-0015010-001

Dear Chief Clerk:

The City of Fort Worth Water Department (“Fort Worth” or “the City”) hereby files these public comments in protest of, and a **request for a contested case hearing** on, the above-referenced application. Fort Worth further requests that it be put on the official mailing list for the above-referenced application with all notices and other communications sent to the undersigned as attorney for Fort Worth at the following address:

City of Fort Worth Water Department  
c/o Stephen C. Dickman  
Kelly Hart & Hallman LLP  
301 Congress Ave., Suite 2000  
Austin, Texas 78701  
Tel: 512-495-6413  
Fax: 512-495-6401

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY  
2012 NOV - 5 AM 10:20  
CHIEF CLERKS OFFICE

**Justiciable Interest of Fort Worth.** Fort Worth would be adversely affected in a way not common to the general public because the Abraxas Corporation wastewater treatment plant and the Hilltop Village residential subdivision that comprises its service area lie completely within Fort Worth’s extra-territorial jurisdiction (ETJ) where the City has distinct governmental interests in and jurisdiction over health and safety. Sections 42.001, 212.002, 212.003, 212.110, and 401.002 of the Texas Local Government Code establish Fort Worth’s statutory authority over the health and safety of its citizens and of persons in its ETJ, and over development – including the provision of utilities – in its ETJ. Section 401.002 of the Texas Local Government Code authorizes Fort Worth to protect its drinking water supply in its ETJ as well as in its city limits. Section 212.002 of the Local Government Code provides that the City may adopt rules regulating development to promote the health, safety, morals or general welfare of the municipality and the safe, orderly and healthful development of the municipality.<sup>1</sup> Section

<sup>1</sup> Section 212.002 provides that: “After a public hearing on the matter, the governing body of a municipality may adopt rules governing plats and subdivisions of land within the municipality’s jurisdiction to promote the health, safety, morals, or general welfare of the municipality and the safe, orderly, and healthful development of the municipality.”

1411148\_1

212.003 provides that the city may extend those laws to the ETJ.<sup>2</sup> Under sections 212.002-.003, the City has authority to regulate development in its ETJ, and that authority includes the power to regulate the design criteria of utilities.<sup>3</sup> Thus, Fort Worth's specific governmental interests are affected by the application. TCEQ's procedural rules expressly state that local governmental entities with authority under state law over issues raised by the application may be considered affected persons.<sup>4</sup>

In addition, the application ultimately discharges into Lake Worth which is one of the City's public water supply sources and is located within the incorporated limits of the City. According to information contained in the application and statements of TCEQ staff reviewing this application, the distance between the subject wastewater treatment plant and Lake Worth is estimated to be approximately 4.7 to 5.4 streambed miles.

**Fort Worth Objections to Proposed Permit.** Fort Worth would be adversely affected by the proposed permit in several respects:

1. Violation of the State's Regionalization Policy. The applicant has not considered the need and regional treatment options for wastewater treatment, including the availability of existing or proposed area-wide or regional waste collection, treatment, and disposal systems as required by Texas Water Code § 26.0282. Fort Worth may soon have the ability to provide wastewater services to the Hilltop Village subdivision through construction of lift stations connected to its municipal wastewater collection and treatment system. The proliferation of small package water and sewage treatment plants violates the State's policy goal of achieving regionalization of water and sewer utility services. Therefore, Fort Worth requests that any permit issued in this matter include the following new provision to be inserted as Operational Requirement 8.d. on page 15 of the draft permit:

*"In the event the City of Fort Worth annexes any portion of the Hilltop Village subdivision, the permittee shall submit plans to the City of Fort Worth within 90 days of the date of annexation for connecting the permittee's wastewater collection system to the City's sewer system, in conformity with all applicable City of Fort Worth ordinances and policies concerning wastewater utility construction and installation. Permittee shall implement such plans upon their approval in writing by the City of Fort Worth."*

2. Need to Determine Whether Lake Worth Water Quality Standards Apply. The draft permit specifies effluent discharge limits of 20 mg/l for 5-day biochemical oxygen

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TEX. LOC. GOV'T CODE ANN. § 212.002. Fort Worth has adopted such rules.

<sup>2</sup> Section 212.003(a) provides, "The governing body of a municipality by ordinance may extend to the extraterritorial jurisdiction of the municipality the application of municipal ordinances adopted under Section 212.002 . . . ." TEX. LOC. GOV'T CODE ANN. § 212.003. Fort Worth's rules extend to its ETJ.

<sup>3</sup> *City of Lucas v. North Texas Municipal Water District*, 724 S.W.2d 811, 823 (Tex. App.--Dallas 1986, writ ref'd n.r.e.).

<sup>4</sup> 30 TEX. ADMIN. CODE § 55.203(b) and (c)(6).

demand (BOD<sub>5</sub>), 20 mg/l for total suspended solids (TSS), and 2 mg/l for dissolved oxygen (DO). However, the TCEQ rules for wastewater discharges into the Lake Worth watershed within five stream miles upstream of the 594.3 msl pool level of Lake Worth require effluent discharge limits of 10 mg/l BOD<sub>5</sub>, 15 mg/l TSS, and 4 mg/l DO, plus the use of filtration to supplement suspended solids removal.<sup>5</sup>

The TCEQ permit review staff stated in a memo dated June 4, 2012: “During the ERC Review of the draft permit for this facility, a more accurate assessment of the distance between this discharge and Lake Worth (Segment 0807) revealed that the Lake Worth watershed Rule applies to this facility. Previously, the distance to Segment 0807 was estimated to be approximately 5.6 miles and the more refined estimate is 4.7 miles.” However in a later memo dated July 17, 2012, the TCEQ staff again revised its opinion and stated that the applicant had provided new elevation information that enabled a more detailed and accurate estimate of the distance between the discharge and the normal pool elevation of Lake Worth, and that using these data, the distance from the discharge is estimated to be approximately 5.4 stream miles. **Attachment 1** is a copy of these two TCEQ staff memos.

A review of the “new elevation information” submitted by the applicant indicates that the applicant’s engineer merely supplied TCEQ staff with a USGS map with the distances marked from the treatment plant to Silver Creek Road, plus a North Central Texas Council of Governments (NCTCOG) map with contours marked from Silver Creek Road to an approximate Lake Worth pool elevation of 594.0 feet msl. The applicant’s engineer then states cryptically “My distances on the USGS map are from zooming way in and tracing the waterway as plotted. I may have more detail on the meanderings than you would be able to pick up from a paper map.” **Attachment 2** is a copy of the Applicant’s submittal.

Therefore the new information submitted by the applicant does not appear to be a “more detailed and accurate estimate of the distance between this discharge and the normal pool elevation of Lake Worth.” TCEQ staff initially believed that the distance was 5.6 stream miles, then refined that to an estimate of 4.7 stream miles, then again revised that based on the applicant’s contour map submittal to an estimate of 5.4 stream miles. From this record of flip-flopping estimates, it is clear that a hearing is needed to resolve the issue and determine the actual stream mile distance between the wastewater treatment plant discharge point and Lake Worth at a pool elevation of 594.3 feet msl. If the true distance is five stream miles or less, then the permit is required to have effluent discharge limits of 10 mg/l BOD<sub>5</sub>, 15 mg/l TSS, and 4 mg/l DO, plus the use of filtration to supplement suspended solids removal.

3. Applicant’s Demonstrated Inability to Achieve BOD<sub>5</sub> Limit. Even if the permit is issued with a BOD<sub>5</sub> limit of 20 mg/l as proposed in the draft permit, it is clear from the

---

<sup>5</sup> 30 TEX. ADMIN. CODE §§ 311.61 – 311.63.

operational history of the Applicant's wastewater plant that the plant is not capable of achieving that level of treatment. According to the Executive Director's Statement of Basis and Technical Summary, the Applicant's Monthly Effluent Report data for the period January 2011 through December 2011 shows an average BOD<sub>5</sub> of 34 mg/l. In light of the age of the treatment plant, its poor compliance history, and its record of lax operational control, it is not surprising that the plant has not been able to come close to achieving BOD<sub>5</sub> effluent quality of 20 mg/l, much less a possibly required effluent quality of 15 mg/l. Moreover, the Applicant has had to seek, and did obtain, TCEQ staff approval of at least three variances from normally applicable TCEQ design criteria. TCEQ should not issue a water quality discharge permit for a wastewater plant known to be incapable of meeting the permitted limits unless some further demonstration is made by the Applicant showing how the permitted limits will be met through installation of updated facilities, backup equipment, and contingency plans.

4. Inappropriate Location of Wastewater Plant Partially Submerged in Water. In the Applicant's response dated November 21, 2011 to TCEQ permit review staff (copy provided as **Attachment 3**), Abraxas responds to TCEQ staff's question about a photograph showing that a portion of the plant is under water. The Applicant responded:

"Except for a few times during prolonged droughts when no irrigation was being conducted, the lower portion of the plant has been submerged. The plant was sited low in the hollow when built to facilitate gravity flow from the hill on Cattlebaron Drive. The facility is regularly checked for structural integrity in and below the wash line area of the submergence."

Indeed, the site map submitted with the application clearly shows the plant to be located well within the conservation pool of the pond into which the plant initially discharges. See **Attachment 4**. While it is inconceivable that TCEQ would permit a new wastewater plant located in a pond where it is partially submerged, the Abraxas plant was built in the 1960's and so TCEQ and the public must deal with the existing location of the plant. Because of the danger of structural impairment of the plant and in light of the poor operational history of the plant as described herein, Fort Worth requests that a special permit provision be added as follows:

*"Within six months of issuance of this permit, permittee shall submit to TCEQ a structural assessment of the wastewater treatment plant performed by a licensed Texas professional engineer. The assessment shall specifically include an evaluation of the extent to which the structural integrity of the treatment plant has been impaired by being submerged in water for prolonged periods and safeguards to protect the structural integrity of the plant assuming the plant remains partially submerged on a continual basis."*

5. Applicant's Poor Compliance History. The Applicant has a singularly poor history of compliance with TCEQ's rules and a demonstrated record of poor operational practices.

November 2, 2012

Page 5

A recap of the Applicant's record of complaints and non-compliances is contained in the letter dated September 20, 2010 from Haywire Ranch a copy of which is attached hereto as **Attachment 5**. For the reasons stated in that letter and in this comments letter, Fort Worth requests that the Abraxas sewer utility system be placed under TCEQ supervision as authorized by Section 13.4131 of the Texas Water Code, or in receivership under the process authorized under Section 13.412 of the Texas Water Code.

Fort Worth will withdraw its request for contested case hearing if the draft permit and final permit is issued with the two new permit provisions set forth in Comments 1 and 4 above, or if TCEQ proceeds to place the wastewater plant into supervision or receivership as requested in Comment No. 5.

If you have any questions or desire additional information, please feel free to contact me at any time.

Sincerely,



Stephen C. Dickman  
Outside Counsel to the City of Fort Worth

Enc.: Attachments 1 through 5.

cc: Mr. Frank Crumb, Director Fort Worth Water Department  
Ms. Christa Reynolds, City of Fort Worth Legal Department

# **ATTACHMENT 1**

## TCEQ Interoffice Memorandum

---

**To:** Municipal Permits Team  
Wastewater Permitting Section

**From:**  Mark A. Rudolph, P.E.  
Water Quality Assessment Team  
Water Quality Assessment Section

**Date:** July 17, 2012

**Subject:** Abraxas Corporation New Wastewater Permit (#15010-001, TX0133116)  
Discharge to a tributary of Lake Worth (Segment 0807)

**This memo supersedes the one issued June 4, 2012.**

The applicant has provided new elevation information that enables a more detailed and accurate estimate of the distance between this discharge and the normal pool elevation of Lake Worth (Segment 0807). Using these data, the distance from this discharge and Segment 0807 is estimated to be approximately 5.4 miles. Since the distance is greater than 5 stream miles, the effluent limits prescribed in the watershed rule for Segment 0807 **do not apply** to this discharge.

The applicant is requesting an effluent flow for this facility of 0.020 MGD. A dissolved oxygen analysis of the discharge was conducted using a Continuously Stirred Tank Reactor (CSTR) model of the immediate receiving waters (man-made pond) and an uncalibrated QUAL-TX model for the waters downstream of the pond. No base flow was assigned to the receiving waters in the analysis.

Based on model results, the effluent set recommended in the May 25, 2012 modeling memo is anticipated to be adequate. These limits include **20 mg/L BOD<sub>5</sub> and 2 mg/L DO (modeled with 12 mg/L Ammonia-Nitrogen)**. These limits are predicted to be adequate to ensure that the dissolved oxygen level in the receiving waters will be maintained above the criteria (man-made pond, 3 mg/L; unnamed drainage and tributary, 2 mg/L; Haywire Lake #2, 5 mg/L).

Coefficients and kinetics used in the model are a combination of standardized default and estimated values. The results of this evaluation can be reexamined upon receipt of information that conflicts with the assumptions employed in this analysis.

Segment 0807 is not currently listed on the State's inventory of impaired and threatened waters (the 2010 Clean Water Act Section 303(d) list).

An approved TMDL entitled *One Total Maximum Daily Load for Polychlorinated Biphenyls (PCBs) in Fish Tissue in Lake Worth* is available for this Segment (project # 63)

The effluent limits recommended above have been reviewed for consistency with the State of Texas Water Quality Management Plan (WQMP). The proposed limits are not contained in the approved WQMP. However, these limits will be included in the next WQMP update. A Waste Load Evaluation has not been prepared for Segment 0807.

# TCEQ Interoffice Memorandum

---

**To:** Municipal Permits Team  
Wastewater Permitting Section

**From:** *MAN* Mark A. Rudolph, P.E.  
Water Quality Assessment Team  
Water Quality Assessment Section

**Date:** June 4, 2012

**Subject:** Abraxas Corporation New Wastewater Permit (#15010-001, TX0133116)  
Discharge to a tributary of Lake Worth (Segment 0807)

**This memo supersedes the one issued May 25, 2012.**

During the ERC Review of the draft permit for this facility, a more accurate assessment of the distance between this discharge and Lake Worth (Segment 0807) revealed that the Lake Worth watershed Rule applies to this facility. Previously, the distance to Segment 0807 was estimated to be approximately 5.6 miles and the more refined estimate is 4.7 miles. Therefore, the minimum effluent limits prescribed in the rule take precedence over those derived during the modeling analysis of this facility.

The applicant is requesting an effluent flow for this facility of 0.020 MGD. A dissolved oxygen analysis of the discharge at the reduced flow was conducted using a Continuously Stirred Tank Reactor (CSTR) model of the immediate receiving waters (man-made pond) and an uncalibrated QUAL-TX model for the waters downstream of the pond. The facility is located in Parker County. No base flow was assigned to the receiving waters in the analysis.

Based on model results, an effluent set of 20 mg/L BOD<sub>5</sub>, modeled with 12 mg/L Ammonia-Nitrogen and 2 mg/L DO is predicted to be necessary to ensure that the dissolved oxygen level in the receiving waters will be maintained above the criteria (man-made pond, 3 mg/L; unnamed drainage and tributary, 2 mg/L; Haywire Lake #2, 5 mg/L). However, the Lake Worth Watershed rule requires an effluent set of **10 mg/L BOD<sub>5</sub>, 15 mg/L TSS, and 4 mg/L DO**. In addition, the rule contains a requirement for filtration.

Coefficients and kinetics used in the model are a combination of standardized default and estimated values. The results of this evaluation can be reexamined upon receipt of information that conflicts with the assumptions employed in this analysis.

Segment 0807 is not currently listed on the State's inventory of impaired and threatened waters (the 2010 Clean Water Act Section 303(d) list).

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# **ATTACHMENT 2**

## Mark Rudolph

---

**From:** Terry Graham [terry@abaxial.net]  
**Sent:** Friday, July 06, 2012 8:58 AM  
**To:** Mark Rudolph  
**Subject:** RE: Distance to lake Worth from the ABRAXAS treatment discharge  
**Attachments:** USGS-120705 Discharge Route to Lake-a.pdf; DFWMaps-120705 Discharge route to lake.pdf

Mark,

Here they are.

*Terry*

Abaxial, Inc.  
Terrence A. Graham, PE, RPLS  
817-228-9501

---

**From:** Mark Rudolph [mailto:mark.rudolph@tceq.texas.gov]  
**Sent:** Friday, July 06, 2012 7:11 AM  
**To:** [terry@abaxial.net](mailto:terry@abaxial.net)  
**Subject:** RE: Distance to lake Worth from the ABRAXAS treatment discharge

Terry,

The maps you referenced did not come through.

Please resend them.

Thanks,

Mark Rudolph, P.E.  
512-239-4534

---

**From:** Terry Graham [mailto:terry@abaxial.net]  
**Sent:** Thursday, July 05, 2012 5:01 PM  
**To:** Mark Rudolph  
**Cc:** 'Laura Warren'; [lfabraxas@aol.com](mailto:lfabraxas@aol.com)  
**Subject:** Distance to lake Worth from the ABRAXAS treatment discharge

Mark,

Thanks for your time today. The City of Fort Worth has the conservation level at 594.1 which is essentially the same elevation the TCEQ is using. My measurement was to approximately elevation 594.

I have attached a copy of the USGS map we submitted with the distance from the treatment plant to the confluence with Silver Creek and to the intersection with Silver Creek Road shown. I have also attached a pdf printout of the NCTCOG map with contours shown from Silver Creek Road to Elevation 594. The distance is 2,130 feet.

My distances on the USGS map are from zooming way in and tracing the waterway as plotted. I may have more detail on the meanderings than you would be able to pick up from a paper map.

Let me know if you have any concerns that I have not addressed.



Copyright NCTCOG

Watercress L.

reek Rd

Silver Creek

SILVER CREEK RD

Government Creek

Lake



600

500

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620

610

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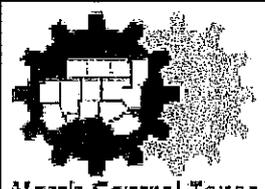
600

600

710

720

650



North Central Texas  
Council of Governments

My Map

DFWMaps.com

**DISCLAIMER**

This data has been compiled for NCTCOG. Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data.



# **ATTACHMENT 3**

RECEIVED

NOV 28 2011

WATER QUALITY DIVISION  
TCEQ

Abraxas Corporation  
7921 Main St.  
North Richland Hills, TX 76182  
817-656-3636  
817-788-9531 Fax

November 21, 2011

*Cover Letter via Facsimile 512-239-4430*

*Conforming copy via Certified Mail Return Receipt Requested # 7010-3090-0001-2635-7545*

Mr. Julian Centeno, Jr., PE  
Water Quality Division  
TCEQ  
Building F, Room 2101  
12100 Park 35 Circle  
Austin, TX 78753

RE: Response to Facsimile dated October 18, 2011  
Abraxas Corporation WWPT  
Proposed Permit # WQ001501001

Dear Mr. Centeno:

In response to your request, I have listed the answers in the order you presented them.

1. *Item 2b page 13 admin report 1.1: The buffer zone extends beyond ...*

This facility has been in this location for more than 40 years. The owner of the land to the north was the owner of the facility at one time, as I understand the history. It is our understanding that the land owner is contesting our application and has terminated our use of the irrigation area further north from the buffer zone.

The purpose of the buffer, as we understand the regulation, is for odor control from residential use. The land included in our buffer zone is within the 100 year flood plain as defined on the latest FEMA FIRM and therefore unusable for residential purposes for more than 250 feet from the plant. Therefore, we requested in our package a variance to the requirement since the intent of the has been met by other mechanism. I have included a copy of the FEMA FIRM and an overlay to show the 100 year flood plain overlaid on an aerial photo of the plant site. None of the plant site is within the 100 year flood plain.

Parker County is in the process of providing a letter acknowledging the use of county ROW as a portion of the odor control buffer.

2. *What is the facility re-aeration zone? What criterion was used for its design?*

The re-aeration zone is the name given to that portion by the manufacturer more than 40 years ago. It is in fact an aeration zone. We had continued the nomenclature.

Circa 2000, the TNRCC field person directed Abraxas to modify the inflow routing to the end of the "re-aeration chamber. The entire "aeration chamber" and "re-aeration chamber" is being utilized as the aeration zone for a conventional activated sludge treatment plant.

3. *The proposed effluent limitations for the facility will include 2 mg/l NH<sub>3</sub>-N based on daily average. We note the ....*

The design has been modified to include sufficient air to provide for nitrification to meet the 2 mg/L design requirement. The existing compressors have sufficient capacity to supply the additional air. A copy of the revised design calculations is attached.

4. *Please provide the historical data upon which the proposed flow was derived.*

Attached is a spreadsheet with the historical data.

5. *The application is for a new TPDES permit subject to ... approval is needed for the use of the proposed 2-hour peak flow of 2 times the daily average flow as well as the proposed BOD<sub>5</sub> of 170 mg/l for design purposes. A variance...*

We have discussed the design criteria with Mr. Louis C. Herrin, III, PE. Based on the engineers information, he requested that the back-up for the use of real data be in the package and not as a separate submittal. We will also email him a copy of this so that he will be familiar with our understanding of the discussion and can contact me if we misunderstood anything.

6. *We need a clarification of the applicants proposal to use the existing storage pond "to preserve the existing wildlife"....*

The applicant is contemplating the existing pond as being part of the discharge route.

7. *The photograph #1 appears to show that a portion of the existing facility is under water. Is this a typical situation for the facility? Is the facility experiencing Infiltration and Inflow?*

Except for a few times during prolonged droughts when no irrigation was being conducted, the lower portion of the plant has been submerged. The plant was sited low in the hollow when built to facilitate gravity flow from the hill on Cattlebaron Drive. The facility is regularly checked for structural integrity in and below the wash line area of the submergence.

Sincerely,



Laura Farhood Warren  
Abraxas Corporation

Enclosures: AS

# **ATTACHMENT 4**



**Abaxial, Inc.**  
 Engineers - Surveyors  
 F-3140  
 Fort Worth, Texas  
 817-228-9501

**Abraxas Corporation**  
 7921 Main Street  
 Smithfield, Texas 76180

**Item 2 Dom. Admin Rept 1.1**  
**150' Buffer Zone**  
**Existing Facility**

Drawing  
 090122.03-101  
 Oct 2010

WQ 00014984001

1 of 1

# **ATTACHMENT 5**



September 20, 2010

Page 2

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- Abraxas filed a new permit application in 2010 (see attached letter) but **failed to follow through**.
- July 29, 2010 – complaint related to sanitary sewer overflow
- July 23, 2010 – complaint due to sanitary sewer overflow
- May 10, 2010 – notice of violation for exceeding maximum containment level for gross alpha particle activity
- May 24, 2010 – operating without a permit
- May 19, 2010 – violations related to release of sewage for two (2) hours in the street and failure to remove solids from the release and failure to provide update on collection system
- October 30, 2009 – notice of violations from compliance investigation, including failure to maintain fencing, failure to seal well heads, failure to repair leaks, failure to maintain thorough operations manual
- May 27, 2009 – letter from TCEQ noting violation related to monitoring and reporting requirements for Disinfectant Level Quarterly Operating Report
- March 16, 2009 – water quality complaint related to sanitary sewer overflow, overflow continued for 20 hours, Notes 3 sanitary sewer overflows in three (3) years
- February 6, 2009 – obstruction in line with backup released
- October 9, 2008 – complaint regarding strong sewer odors
- July 31, 2008 – failure to submit both 2007 Customer Confidence Report and 2007 Certification of Delivery
- June 6, 2008 – notice of deficiency letter from TCEQ indicating problems with application for water rate change

Based on the above, and Abraxas' **continued operation without a permit**, we note our client's strong opposition to the June 28, 2011 permit application.

**We are extremely concerned about the alternate/current plan to deal with effluent since Abraxas is not permitted to discharge onto Haywire Ranch.**

Abraxas appears to be incompetent in their operations and financially inadequate to properly operate the facilities. There are concerns for their customers and the water quality in the receiving stream. Our client not only opposes the permit, but feels that the system should be placed in receivership.

Finally, to be clear, any and all past permission to discharge to Haywire Ranch and/or irrigate **has expired** and Abraxas was expressly notified of that fact on April 24, 2010. Any further discharges to the 20 acres owned by Haywire Ranch are not authorized and will be treated as a trespass. We will be reviewing the permit application to determine Abraxas' plan for discharges if indeed the irrigation equipment has been removed. We will submit detailed comments after our review.

September 20, 2010

Page 3

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If you have any questions, please do not hesitate to call.

Yours very truly,



Cheryl L. Coon

CLC/lrg

Y:\hodge\Haywire-Abraxas\Letters\TCEQ letter re contested case hearing.doc

cc: **Via Certified Mail**  
Ms. Laura Farhood Warren  
7921 Main Street  
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