

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2010 AUG -9 PM 4: 50

APPLICATION BY REED LAMAR	§	BEFORE THE TEXAS
BOWERS FOR	§	CHIEF CLERKS OFFICE
PERMIT NO. WQ0004005000	§	COMMISSION ON
	§	ENVIRONMENTAL QUALITY

**REED LAMAR BOWERS SHRIMP FARM'S
MOTION TO OVERTURN**

TO THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY:

COMES NOW Reed Lamar Bowers Shrimp Farm ("Applicant"), and files this Motion to Overturn Executive Director's granting of the amendment to Permit No. WQ0004005000 signed on July 15, 2010 (the "Permit Amendment"), and would respectfully show as follows:

I. INTRODUCTION

This matter relates to the renewal of the wastewater discharge permit for the Reed Lamar Bowers Shrimp Farm. Because the Texas Commission on Environmental Quality ("TCEQ" or "Commission") rules require aquaculture facilities to sample for a list of metals when renewing their permit, coupled with the depressed market-price for shrimp, the economic viability of this facility is very much in doubt.

II. FACTS

Reed Lamar Bowers Shrimp Farm is located near Collegeport in Matagorda County, Texas. Mr. Harold Bowers began development of what was then known as the "Bowers Shrimp Farm" in 1989. The facility is now owned and operated by Mr. Bowers' son, Mr. Reed Bowers. As currently configured, the facility currently comprises of 88 aquaculture ponds with an aggregate area of approximately 445 water acres to propagate fish and shrimp.

When the Reed Lamar Bowers Shrimp Farm was initially constructed, TCEQ's predecessor agency did not require discharge permits for aquaculture facilities. The initial permit for the facility was granted by the TCEQ on July 28, 2004. The application for renewal of the permit, which is now before the Commission, was filed on May 29, 2009.

The Applicant had requested, and the Executive Director ("ED") approved, sampling one time of the four outfalls instead of four times per outfall because the Applicant believed that it costs too much for sixteen samples for all of the parameters that are required to be analyzed. When the Applicant did the screening test, levels of copper and selenium were indicated to be at a level that resulted in the ED incorporating a monitoring requirement for copper and selenium into the draft permit. The Applicant requested a retesting requirement in lieu of the monitoring requirement. (*See* Attachment 1). The Applicant believed that the ED was going to allow retesting. When the Environmental Protection Agency ("EPA") reviewed the permit, it was insisted that the monitoring requirement be included in the permit (*See* Attachment 2). The ED then issued the permit with the monitoring requirement in the permit.

III. DISCUSSION

There is no issue in this renewal with the water quality parameters that are actually affected by aquaculture facilities: dissolved oxygen, suspended solids, and ammonia. The only issue before the Commission is the requirement that the Applicant to do weekly sampling for two metals — copper and selenium. These metals are not found in the feed or juvenile shrimp and fish¹ placed into the ponds. Accordingly, recent sampling shows both selenium and copper in

¹ These metals are trace elements in animals and food, but not at levels above background for water.

the effluent to be slightly lower than the bay water pumped into the facility (See Attachment 3). Sampling for metals for aquaculture facilities only occurs because it is required in the TCEQ application forms applicable to industrial and municipal discharges. If toxic levels of these substances actually occurred in the farm, the farm would have long since closed. Also, if the levels of copper and selenium are actually elevated, but not from the operations of the facility, it is unclear what Applicant could do to reduce copper and selenium in the effluent.

Analysis of metals in brackish waters is subject to matrix interference that can result in inaccurate results. For example, two shrimp farms in South Texas did metals scans in the process of renewing their permits that indicated monitoring requirements and/or effluent limits were needed for silver, coppers, selenium, and zinc for one farm and copper for the other. The farms engaged a laboratory that has the capability to accurately measure low concentrations of metals in saltwater. The lab refers to its method as the "clean sampling method." The results from that laboratory showed that the concentrations of the metals were less than the thresholds that requires a monitoring requirements or effluent limits in a permit. The only problem is that the clean sampling method is very expensive to use. In 2005, the cost was about \$1,000 per sample. The Applicant cannot afford to do a weekly sampling using the clean sampling method; however, it could possibly afford to use the clean method if a retest is allowed.

IV. CONCLUSION

The Applicant requests that the Commission overturn the ED's action of issuing the permit and remand the renewal application to the ED for the purpose of allowing a retest of copper and selenium in lieu of the monitoring and effluent limits currently in the permit. The

Applicant understands that the EPA will have to be convinced that a retest of copper and selenium is appropriate.

Respectfully submitted:



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**ATTORNEY FOR REED LAMAR BOWERS
SHRIMP FARM**

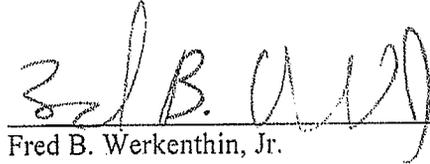
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CERTIFICATE OF SERVICE

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I hereby certify that a true and complete copy of the above and foregoing has been sent to all persons on the attached mailing list on this, the 9th day of August 2010.

CHIEF CLERK'S OFFICE


Fred B. Werkenthin, Jr.

MAILING LIST

for

REED LAMAR BOWERS SHRIMP FARM
TPDES Permit No. WQ0004005000

FOR THE APPLICANT:

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Palacios, TX 77465

Fred B. Werkenthin, Jr., Attorney
Booth, Ahrens & Werkenthin, P.C.
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Austin, TX 78701-3515

PROTESTANTS/INTERESTED PERSONS:

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Texas Parks & Wildlife Department
4200 Smith School Road
Austin, TX 78744-3218

FOR THE EXECUTIVE DIRECTOR:

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Environmental Law Division MC-173
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Tres Koenings, Technical Staff
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FOR OFFICE OF PUBLIC ASSISTANCE:

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FOR THE CHIEF CLERK:

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

COURTESY COPY:

Tammy Brooks, Secretary
Coastal Coordination Council
P.O. Box 12873
Austin, TX 78711-2873

ATTACHMENT 1

LAW OFFICES OF
BOOTH, AHRENS & WERKENTHIN, P.C.

A PROFESSIONAL CORPORATION
615 CONGRESS AVENUE, SUITE 1515
AUSTIN, TEXAS 78701-3503
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FRED B. WERKENTHIN, JR.
WIL GALLOWAY
TREY NESLONEY

CAROLYN AHRENS
OF COUNSEL

JOSEPH S. BABB
OF COUNSEL

January 18, 2010

Mr. Tres Koenings
Texas Commission on Environmental Quality
Wastewater Permitting Section, Water Quality Division
P.O. Box 13087, MC-148
Austin, Texas 78711-3087

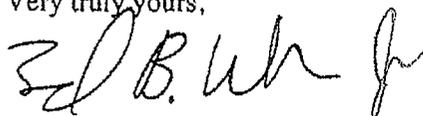
VIA E-MAIL

Re: Reed Lamar Bowers; Proposed TPDES Permit No. WQ0004005000; Request to modify draft permit

Dear Tres:

I have discussed the situation with my client and we request that the draft permit be modified by adding a retest requirement for selenium and copper. As you are aware, they are not operating this time of year so the samples for retest will have to be collected in the summer when they are discharging. They request that the language require one sample per outfall, which would result in four total samples. Please call me if you have any problems with proceeding this way. If you have any questions, please call Fred B. Werkenthin, Jr.

Very truly yours,



Fred B. Werkenthin, Jr.

FBW/cd

cc: Mr. Mike Hooper

VIA E-MAIL

ATTACHMENT 2



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6
1445 ROSS AVENUE
DALLAS, TEXAS 75202-2733

-- original dated March 5, 2010 --

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (7009 1680 0002 2748 0859)

Mr. Chris Linendoll, E.I.T., Section Manager
Wastewater Permitting Section (MC-148)
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: Interim Objection to Draft Permit and
Request for Additional Information
TPDES Permit No. TX0112691
State Permit No. WQ0004005000
Reed Lamar Bowers (Bowers Shrimp Farm)

Dear Mr. Linendoll:

Thank you for the opportunity to review the draft Reed Lamar Bowers (Bowers Shrimp Farm) permit (TPDES Permit No. TX0112691) that Ms. Evelyn Rosborough (EPA) received on January 20, 2010. As a result of our review, EPA finds that we need additional information to determine whether the draft permit meets all of the requirements of the Clean Water Act (CWA) and applicable federal regulations.

- 1) The submitted calculations for water quality-based effluent limits indicate that effluent limitations are required for copper and selenium; however, the draft permit does not include these limitations. Page 5 of the Statement of Basis (SoB) states that "the applicant submitted only one round of sampling for each outfall instead of the required four samples per outfall. The applicant indicated that the samples obtained were erroneous due to matrix interference and requested additional sampling be allowed." It appears that the facility had adequate opportunity to sample during the 2009 summer harvest season after submitting their application dated May 29, 2009, and that final effluent limitations with an appropriate compliance schedule should be added to the draft permit. Please submit any additional information which EPA should consider and provide any appropriate revisions to the SoB and the draft permit.
- 2) Data submitted by the applicant indicate an effluent concentration of 640 (i.e., colonies/100 ml) for fecal coliform (FC) (i.e., previous criteria for FC was 200 for the geometric mean and 400 for single samples). It is noted that no

discharge of domestic sewage is authorized by this permit. As discussed in the SoB, AU 2452_02 and AU 2452_03 are listed as impaired for bacteria (in oyster waters) on the 2008 CWA Section 303(d) list. The designated uses for Segment No. 2452 are exceptional aquatic life use, contact recreation, and oyster waters. The approved water quality standards contain numeric criteria for Enterococci for saltwater contact recreation. It appears that the application should have contained analytical data for Enterococci and that the draft permit should contain final effluent limitations for bacteria with an appropriate compliance schedule. Please submit any additional information which EPA should consider and provide any appropriate revisions to the SoB and the draft permit.

- 3) Based on the "Facility Map" and the "USGS Map" included in the application, it appears that Outfalls 001, 002, 003 and 004 may commingle prior to discharge. Please clarify.

Issuance of this permit is contingent upon resolution of the issues discussed above. We would be happy to work with you and your staff to clarify or resolve these issues. Thank you for your cooperation. If we may be of any assistance, please call me at (214) 665-7170, or have your staff contact Kay Schwab at (214) 665-6635. Alternatively, Kay can be reached via email to schwab.kay@epa.gov.

Sincerely yours,

Claudia V. Hosch
Associate Director
Water Quality Protection Division
NPDES Permits and TMDL Branch

cc: Tres Koenings, Industrial Permits Team
Wastewater Permitting Section (MC 148)
TCEQ, P.O. Box 13087
Austin, Texas 78711-3087

ATTACHMENT 3

Sampled July 28, 2010

	Selenium mg/L	Copper mg/L
Outfall D 50	0.0218	0.00691
Outfall D 74	0.0236	0.00619
Outfall D 26	0.0146	0.00951
Outfall D 40	0.0208	0.00968
Ave Outfalls	0.0202	0.0080725
Bay Water	0.0226	0.00983

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FAX COVER SHEET

TO: CHELL, OFFICE OF THE CHIEF CLERK RE: 0256
FAX: (512) 239-3311
FROM: LAW OFFICES OF BOOTH, AHRENS & WERKENTHIN, P.C.
RE: BOWERS SHRIMP FARM'S MOTION TO OVERTURN
DATE: AUGUST 9, 2010
PAGES: 14, INCLUDING COVER SHEET
MESSAGE:

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