TCEQ DOCKET NO. 2010-1293-IWD

Application of REED LAMAR BOWERS for TPDES PERMIT NO. WQ0004005000	**§ § §**	**BEFORE THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

EXECUTIVE DIRECTOR'S RESPONSE TO MOTION TO OVERTURN

I. Introduction

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to the Motion to Overturn (MTO) the ED's decision to issue TPDES Permit Number WQ0004005000, filed by Fred Werkinthin on behalf of Reed Lamar Bowers (Applicant). The Applicant operates Bowers Shrimp Farm. There were no comments received during the public comment period that required the ED to prepare a Response to Public Comment (RTC). The ED urges the Commission to grant the MTO because the Applicant did not agree in writing to the issuance of the draft permit as is required by Texas Water Code (TWC) Section (§) 5.122(a)(2).

II. Description of the Facility

The Applicant applied to renew its wastewater discharge permit that authorizes the discharge of process wastewater (aquaculture pond effluent) at a daily average flow not to exceed 8,000,000 gallons per day (MGD) via Outfalls 001, 002, 003, and 004. The wastewater treatment facility is located adjacent to Tres Palacios Bay at the end of Cockburn Road, approximately two miles south of the City of Collgeport, in Matagorda County, Texas 77465.

The effluent is discharged via Outfalls 001, 002, and 003 to Matagorda County Drainage District #3 Ditch, then to an unnamed natural tidal channel, then to Little Redfish Lake, and then to Tres Palacios Bay/Turtle Bay. The effluent is discharged via Outfall 004 to an unnamed natural tidal channel, then to Little Redfish Lake, then to Tres Palacios Bay/Turtle Bay in Segment No. 2452 of the Bays and Estuaries. The unclassified receiving waters have no significant aquatic life use for Matagorda County Drainage District Ditch #3, and high aquatic life use for the unnamed natural tidal channel and Little Redfish Lake. The designated uses for Segment No. 2452 are exceptional aquatic life use, contact recreation, and oyster waters.

III. Procedural Background

The Applicant's permit was issued on July 12, 2010, and the Office of the Chief Clerk mailed the permit on July 15, 2010. The application for this permit was submitted on May 29, 2009, and declared administratively complete on June 25, 2009. The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published on July 15, 2009, in the *Bay City Tribune.* The Notice of Application and Preliminary Decision (NAPD) was published on January 31, 2010, in the *Bay City Tribune.*

ED staff developed a draft permit and sent it to the Applicant for review on December 2, 2009. That permit contained retest requirements for total copper and total selenium. The retest requirements were placed in the draft permit based on effluent data submitted with the renewal application that indicated that concentrations of these two parameters demonstrated the potential to violate the Texas Surface Water Quality Standards (TSWQS). Retest requirements were placed in the draft permit in lieu of effluent limits for total copper and total selenium based on the Applicant's argument that the data submitted with the application was inaccurate. The Applicant also requested the opportunity to perform more accurate testing.

ED staff sent the United States Environmental Protection Agency (EPA Region 6) a copy of the draft permit for review on January 15, 2010, and EPA Region 6 replied with comments on the draft permit in a letter dated March 15, 2010. The EPA Region 6 commented that the draft permit should contain the appropriate water quality-based effluent limits for total copper and total selenium based on the TSWQS, and that retesting was not appropriate. EPA Region 6 indicated in its letter that issuance of the permit was contingent upon resolution of this issue. Therefore, to obtain EPA Region 6's approval to issue the draft permit, water quality-based limits were imposed in the draft permit.

IV. Analysis of Motion to Overturn

The Applicant filed the MTO, in accordance with 30 Texas Administrative Code (TAC) Section (§) 50.139, within the 23-day period after the Office of the Chief Clerk mailed notice of the signed permit. The Applicant bases his MTO on the fact that he did not consent to the inclusion of monitoring requirements and effluent limits for copper and selenium in the draft permit. TWC § 5.122, which pertains to the Delegation of Uncontested Matters to the ED, requires the Applicant's approval in writing before the ED may take action on an application. The ED agrees that the Applicant did not consent in writing to the inclusion of these requirements and limits and requests that the permit be remanded to the ED for further processing, and if necessary, coordination with EPA Region 6.

V. Executive Director's Recommendation

For the reason stated above, the ED recommends that the Commission grant the Motion to Overturn.

Respectfully submitted,

Mark R. Vickery, P.G.,
Executive Director

Robert Martinez, Director
Environmental Law Division

By _____
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REPRESENTING THE
EXECUTIVE DIRECTOR OF THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

CERTIFICATE OF SERVICE

I certify that on September 3, 2010, the "Executive Director's Response to Motion to Overturn" for Permit No. WQ0004005000 was filed with the TCEQ's Office of the Chief Clerk, and mailed to the persons on the attached mailing list.

_____
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