

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



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

July 15, 2016

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: Nantucket Housing LLC's Application for an Order Authorizing Commencement of Construction; TCEQ Docket No. 2016-1086-MWD; TPDES Permit No. WQ0015381001 (CN604813121; RN108328113)

Dear Ms. Bohac:

Enclosed for filing with the Texas Commission on Environmental Quality (Commission) is the original plus seven copies of the following backup materials for the August 3, 2016 agenda item on the above referenced matter:

1. Staff Memorandum
2. Proposed Order
3. Authorization to Construct Application filed by Nantucket Housing, LLC

Please do not hesitate to contact me at (512) 239-2253 if you have any questions regarding this material. Thank you for your attention to this matter.

Respectfully submitted,

A handwritten signature in cursive script that reads "Hollis Henley".

Hollis Henley
Staff Attorney, Environmental Law Division

cc: Mailing List

Enclosure

Texas Commission on Environmental Quality
INTEROFFICE MEMORANDUM

TO: Texas Commission on Environmental Quality

THRU: Robert Martinez, Division Director, Environmental Law Division Todd Galiga, Water Quality Senior Attorney, Environmental Law Division

FROM: Hollis Henley, Staff Attorney, Environmental Law Division

DATE: 7/17/2016

SUBJECT: Nantucket Housing LLC's Application for Authorization to Construct; Docket No. 2016-1086-MWD; TPDES Permit No. WQ0015381001 (CN604813121; RN108328113)

DESCRIPTION OF MATTER:

Nantucket Housing, LLC (Nantucket) has applied to the Texas Commission on Environmental Quality (TCEQ or Commission) seeking an authorization to construct (ATC) a new wastewater treatment plant to serve a proposed multifamily housing project (Meadows at Cypress Creek) currently under construction. According to Nantucket's application, the ATC is necessary in order for the developer to be certain that it will remain in compliance with the loan agreement for the development project. Additionally, Nantucket hopes to reduce pump and hauling costs via the ATC by having the plant constructed prior to permit issuance in order to minimize operational start time should the permit be granted.

APPLICANT: Nantucket Housing, LLC

TYPE: Authorization to Construct

BACKGROUND:

On May 7, 2015, Nantucket submitted an application for new TPDES Permit No. WQ0015381001, seeking authorization to discharge to an enclosed stormwater pipe; thence to Cypress Creek in Segment 1009 of the San Jacinto River Basin. Nantucket requested a daily average flow not to exceed 27,500 gallons per day (gpd) in the Interim phase and a daily average flow not to exceed 55,000 gpd in the Final phase. To date there have been 182 hearing requests received and legislative interest and opposition to the proposed WWTF from State Representative Allen Fletcher. Nantucket Housing, LLC owns land located at 12321 Huffmeister Road, Cypress, in Harris County, Texas 77429 where the TPDES application proposes to build the facility.

A Public Meeting was held on November 12, 2015. The response to comments (RTC) was filed with the Chief Clerk's Office on April 6, 2016. A letter dated April 21, 2016 was sent to Nantucket giving approval to perform site preparation activity for the WWTF. Consideration of hearing requests is scheduled for the August 3, 2016 agenda as Docket No. 2016-1086-MWD. There is significant public interest in and

opposition to Nantucket's TPDES application. The TCEQ's Commissioners' Integrated Database lists 215 public comments and 182 hearing requests for this application.

According to its application, Nantucket has requested an Authorization to Construct before the issuance of its permit in order to remain in compliance with the Loan Agreement for the Project. Specifically, the Project Schedule for the Loan Agreement states that if Nantucket does not complete all construction of all improvements by December 31, 2016, Nantucket will be required to pay down the loan in the amount of any estimated shortfall beyond \$853,000 as determined by the lender, and such payment must be made no later than January 31, 2017.

Based on the amount of time Nantucket anticipates for a contested case hearing in this matter, it is Nantucket's opinion that the residents will be living in the complex to be served by the proposed WTTFF prior to the issuance of the permit. Therefore, Nantucket expressed concerns about the costs of additional pump and hauling if construction of the plant is delayed until the permit is issued.

COMPLIANCE HISTORY: Since this is a permit action for a never before permitted site and an unbuilt facility, the ratings for Nantucket for the compliance history run during permitting process and for the agenda item was unclassified for the CN and RN. See Compliance History Reports.

AUTHORITY: Texas Water Code (TWC) §§ 26.019 and 26.027(c). Under TWC § 26.027(c) a person may not commence construction of a treatment facility until the commission has issued a permit to authorize the discharge of waste from the facility, except with the approval of the Commission. TWC § 26.019 authorizes the Commission to issue orders and make determinations necessary to effectuate the purposes of TWC Chapter 26.

EXECUTIVE DIRECTOR RECOMMENDATION: The Executive Director recommends that the ATC request be denied. The Commission's authority to approve or deny a request for an ATC is discretionary under the statute. Over approximately the last 10 years, the Commission has granted two requests for an ATC. See Docket No. 2009-1086-MWD, City of Hidalgo; and Docket No. 2011-0402-MWD, H.E.B. Grocery Co., L.P. In these prior cases, the corresponding permit application had received little or no public comments or opposition prior to the ATC request. By contrast, Nantucket's permit application has received 215 public comments and 182 hearing requests. Nantucket stated that the ATC is necessary in order to maintain compliance with its loan agreement for the project. The Executive Director recognizes that approval of an ATC would not bind the Commission in its final permit decision and the application would be proceeding with construction at its own risk. However, the Executive Director is not persuaded that Nantucket has provided sufficient justification for changing the status quo prior to a final permit decision when there is such strong public opposition to the underlying permit application.

CONTACT: Larry Diamond, Municipal Permits Team, Wastewater Permitting Section (MC 148), Water Quality Division, TCEQ, (512) 239-0037.

LEGAL: Hollis Henley, Staff Attorney, Environmental Law Division (MC 173), TCEQ, (512) 239-2253.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



AN ORDER Denying the Request by Nantucket Housing, LLC for an Order Authorizing Commencement of Construction; TCEQ Docket No. 2016-1086-MWD

On August 3, 2016, the Texas Commission on Environmental Quality (Commission or TCEQ) considered Nantucket Housing, LLC's (Nantucket or the Applicant) request for an Order authorizing commencement of construction under §§ 26.019 and 26.027(c) of the Texas Water Code (TWC). Nantucket's underlying wastewater discharge permit application for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015381001 requests the discharge of treated domestic wastewater at a daily average flow not to exceed 27,500 gallons per day (gpd) in the Interim phase and a daily average flow not to exceed 55,000 gpd in the Final phase. The Applicant seeks authorization to commence construction of the Interim Phase of the wastewater treatment facility before the Commission issues the permit. Having considered the evidence, the Commission finds that the request by Nantucket should not be granted.

FINDINGS OF FACT

1. On May 7, 2015, Nantucket submitted an application for new TPDES Permit No. WQ0015381001, seeking authorization to discharge to an enclosed stormwater pipe; thence to Cypress Creek in Segment 1009 of the San Jacinto River Basin at a daily average flow not to exceed 27,500 gpd in the Interim phase and a daily average flow not to exceed 55,000 gpd in the Final phase.
2. Nantucket submitted a written request dated June 2, 2016 for authorization to construct the Meadows at Cypress Creek wastewater treatment facility (WWTF) corresponding to the Interim Phase of Nantucket's permit application (TPDES Permit No. WQ0015381001).
3. The proposed domestic WWTF will be located at 12321 Huffmeister Road, Cypress, in Harris County, Texas 77429.
4. Nantucket seeks to build the Meadows at Cypress Creek WWTF to serve a proposed multifamily housing unit and senior living development.

5. The Applicant requested an ATC to begin construction of the Interim Phase of the Meadows at Cypress Creek WWTF in order to stay in compliance with its loan agreement for the construction of the complex the proposed WWTF is to serve. The Applicant also stated that it needs the ATC to avoid additional pump and hauling if construction of the plant is delayed until the permit is issued.
6. As of July 13, 2016, the TCEQ has received 215 public comments and 182 hearing requests regarding the Applicant's permit application.

CONCLUSIONS OF LAW

1. TWC § 26.027(c) prohibits a person from commencing construction of a treatment facility until the Commission has issued a permit authorizing the discharge of waste from the facility, unless the Commission has approved the construction.
2. TWC § 26.019 authorizes the Commission to issue orders and make determinations necessary to effectuate the purposes of TWC Chapter 26.
3. Based on the Findings of Fact above, Nantucket has not provided sufficient justification to issue the ATC request under TWC § 26.027.

THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS THAT:

1. The Authorization to Construct request by Nantucket Housing, LLC is denied.
2. This Order shall not constrain, bind, or commit the Commission in its decision on any proceeding or matter before the Commission relating to TPDES Permit No. WQ0015381001.
3. The Chief Clerk of the Commission is directed to forward a copy of this Order to Nantucket, the Executive Director of the Commission, and the Public Interest Counsel of the Commission, and to issue the Order and cause it to be recorded in the files of the Commission.

Issued this date:

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Bryan W. Shaw, Ph.D., P.E., Chairman

Texas Commission on Environmental Quality

INTEROFFICE MEMORANDUM

TO: Bridget Bohac, Chief Clerk

DATE: June 30, 2016

THRU:  Firoj Vahora, Team Leader

Municipal Team, Wastewater Permitting Section (MC-148)

FROM: Larry Diamond, Municipal Permits Team, Wastewater Permitting Section

SUBJECT: Request to put Authorization to Construct on upcoming Commission Agenda

Nantucket Housing, LLC - TPDES Permit No. WQ0015381001, EPA ID No. TX0136433 (CN604813121; RN108328113)

We request that the attached Authorization to Construct dated June 2nd, 2016 submitted by Nantucket Housing, LLC be considered by the commission on the August 3rd Agenda.

- The ED recommends setting this item on the same August 3, 2016 Agenda as Hearing Requests/Requests for Reconsideration for Nantucket's permit: **Docket No. 2016-0787-MWD.**
- Unless otherwise instructed, the ED will follow the 19 day before Agenda deadline in providing additional backup materials.

Larry Diamond

Permit Writer's Name

Nantucket Housing, LLC
4001 W. Sam Houston Pkwy. N, Suite 100, Houston, TX 77043

June 2, 2016

TCEQ Applications & Review Team
(MC 148),
P.O. Box 13087, Austin, TX, 78711

RE: Permit No. WQ0015381001

Dear TCEQ Applications and Review Team:

Please allow this cover letter to serve as our request that the previous submitted ATC application submitted on April 7th, 2016 be withdrawn and replaced with this application.

Additionally, attached please find the Project Schedule to the Construction Loan Agreement that we entered into with our lender on the project which is the subject of Nantucket Housing LLC's ATC application. As you can see, the schedule requires completion of construction on the entire project no later than 12-31-2016. Because of the uncertainty regarding a possible CCH on our permit application, we want to be sure that all work, including the installation of the WWTP - is completed by that time.

We seek this at our own risk, well aware that the plant cannot become operational until the permit is finally granted.

Sincerely,



Matthew R Fuqua
Vice President
Nantucket Housing, LLC
(713) 914-9200 (o)

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Water Quality Division
Application Team

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY DOMESTIC WASTEWATER PERMIT APPLICATION

Application for Authorization to Construct

Texas Water Code Section 26.027 allows the construction of a wastewater treatment facility with the approval of the Commission. If the Commission approves this application, it will allow the construction of the facilities described in the permit application, subject to any limitations in the Commission Order. An Authorization to Construct **does not** authorize operation of the newly constructed facility, nor does it constitute any guarantee that a permit will be granted.

1. Applicant Name: Nantucket Housing, LLC

2. Permit Number: WQ0015381001

3. Authorized representative or contact person, and phone number:

Matt Fuqua, Vice President, Nantucket Housing, LLC (713)914-9200, MFuqua@blazerbuilding.com

4. Date Application for Wastewater Permit was submitted: 05/07/2015

5. Date Application for Wastewater Permit was Administratively Complete: 05/29/2015

6. Have you received any notices of deficiency, requesting additional information that needed to be submitted for your application? Yes x No

If Yes, please provide dates of notices of deficiency and dates you responded to notices of deficiency:

In a letter dated May 14, 2015, six (6) items of clarification were requested from TCEQ. These items were addressed within a couple days of receipt and subsequently declared administratively complete on May 29, 2015. No other notices of deficiency have been received since this time.

7. Please explain the reason you need authorization to construct before a final decision on your permit application has been made:

Because of the requirements of the Applicant's lender, the construction of the complex to be served by the proposed wastewater treatment facility to be permitted as sought by the Applicant is well underway. Because of the amount of time anticipated to be required for the contested case hearing in this matter, it is likely that residents will be living in the complex prior to the issuance of the permit. The approval of the ATC will permit the Applicant to have the plant equipment installed and ready for use on the issuance of the permit, so that the Applicant can immediately cease the pumping and hauling of waste which will be required in the interim.

8. Please explain the harm if this authorization is not granted.

In order for the Developer to be certain that it will remain in compliance with the Loan Agreement for the Project, it is necessary for the ATC to be granted. In addition, the developer will incur significant costs in hauling sludge from the project if construction of the WWTP does not commence until the Wastewater Discharge Permit is granted.

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9. What stream segment will the proposed discharge flow into?

The discharge will flow directly into a Harris County Storm Sewer (Approval Attached).

10. Is this discharge into a water quality impaired segment (included in the State 303(d) list)?
Yes ___ No x

11. Have you received any public comments, inquiries or hearing requests regarding the wastewater permit application? Yes x No ___

If Yes, have you contacted the interested person to attempt to resolve their concerns?
If you have, please provide details regarding the possible resolution of those concerns.

A public meeting with TCEO and the community members that submitted the public comments was held on November 12, 2015. Many of the community's concerns were addressed in design of the WWTP. The design includes additional sound enclosures on the blowers and Wax Murtles around the WWTP site to mitigate odor.

12. Are you competing for a CCN with another provider, or are there other CCN issues of which you are aware? Yes ___ No x

If Yes, please explain:

N/A

13. Do you understand that if a permit is issued, it may contain significantly different parameters than you have requested? Yes x No ___

14. Is your plant designed in such a way that you can deal with a significant reduction in effluent limitations if the permit is issued with lower parameters than you are anticipating?
Yes x No ___

15. Do you understand that this is not a permit to operate your facility? Yes x No ___

16. Do you understand that you may not receive a permit? Yes x No ___

17. Do you understand that, in addition to public comment, the TCEQ may also receive comments from the EPA, US Fish & Wildlife, the Army Corps of Engineers, the Texas Historical Commission, National Marine Fisheries Service, and Texas Parks & Wildlife, and that these comments may result in changes to your draft permit? Yes x No ___

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CERTIFICATION

I certify that I understand that authorization to construct is not a permit to operate and does not guarantee that this facility will receive a permit. I understand that, during the application review, public comment, review by EPA and other state and federal agencies, and contested case hearing process, any proposed permit conditions may change, and that effluent limitations may become stricter, necessitating design changes in this facility. I also understand that the permit, if issued, may require a different location for wastewater facilities, a different location for the point of discharge, or may prohibit discharge entirely, requiring a different disposal method.

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.



Authorized Signature*

Date 5/27/16

Matt Fuqua, Vice President

Printed Name

* This application must be signed by an authorized representative, as required under 30 TAC Section 305.44.

HARRIS COUNTY

Public Infrastructure Department
Architecture & Engineering Division

10555 Northwest Freeway, Suite 120
Houston, Texas 77092
(713) 956-3000

March 19, 2015

James W. Johnson, P.E.
Brown & Gay Engineers
10777 Westheimer, Suite 400
Houston, TX 77042

**RE: Wastewater Discharge from 12321 Huffmeister
Final Discharge of 0.055 MGD
Proposed discharge into Huffmeister roadside right-of-way**

Dear Mr. Johnson:

Harris County has received your application for discharge into a county roadside right-of-way at 12321 Huffmeister Road.

The Harris County waterway in which this plant ultimately discharges is impaired for bacteria (*E. coli*), and the plant is part of the TCEQ's Bacteria Implementation Plan project area. Therefore Harris County requests that discharges from the above referenced plant be monitored for bacteria (*E. coli*) with the other required parameters, and effluent limits are placed into the resulting permit in accordance with the *Implementation Plan for Seventy-Two Total Maximum Daily Loads for Bacteria in the Houston-Galveston Region* (adopted by TCEQ on January 30, 2013).

Please note that construction plans designed in accordance with Harris County's criteria and other adopted policies must be submitted for review to the Harris County Permits Office. The receiving roadside ditch or storm sewer's capacity will be reviewed at that time as a condition of receipt of a Harris County permit to construct.

Your application is being processed by the TCEQ and we have no objection at this time to a maximum daily average of 0.055 MGD discharge of treated wastewater into the Huffmeister Road right-of-way, as long as monitoring reports for bacteria (*E. coli*) and Draft Permit effluent limits, when received by TCEQ, are submitted to Harris County at: Harris County Pollution Control Services Department, Attn: Compliance Section, 101 South Richey, Suite H, Pasadena, TX 77506.

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Water Quality Division
Application Team

19 March 2015

If you should have any questions or need additional information, please contact me at dennis.pumilia@hcpid.org

Sincerely,



Dennis Pumilia, P.E.
Harris County Watershed Protection Group

DMP

Attachment: Copy of Letter dated March 3, 2015

cc: Jesse Morales, HC Permits
Alisa Max, HC Permits
Gregg Kohlen, HC Permits
Raymond Beckford, HC Permits
Marc Barbe, HC Permits
Jennifer Wheeler, HC Pollution Control
Denise Hall, HC Pollution Control
Catherine Elliott, HC Flood Control District

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**Water Quality Division
Application Team**

Schedule 4
Project Schedule

1. Commencement.

Subject to Force Majeure, Borrower shall cause Construction of the Improvements to commence no later than thirty (30) days after closing, but in no event later than November 3, 2015.

2. Progress of Construction.

Borrower shall cause Construction of the Improvements to be completed in accordance with the following schedule:

25% Complete	March 31, 2016
50% Complete	June 30, 2016
75% Complete	August 15, 2016
100% Complete	October 1, 2016

3. Completion of Construction of All Improvements.

Regardless of the existence or occurrence of Force Majeure, Borrower shall cause Completion of Construction of all of the Improvements to occur no later than the earlier to occur of (i) the Maturity Date, and (ii) December 31, 2016.

4. Outside Date for Completion of Construction.

Regardless of the existence or non-existence or occurrence or non-occurrence of Force Majeure, Completion of Construction of the Improvements shall occur the earlier of (i) the date of the maturity of the Loan or (ii) the "**placed in service**" date of December 31, 2016. Should Completion of Construction of the Improvements not occur before the placed in service date, if there is a shortfall in the sources to pay down the Loan (lost equity due to any buildings not being placed in service), the Guarantor will be required to pay down the loan in the amount of any estimated shortfall beyond \$853,000 as determined by Lender, and such payment shall be made no later than January 31, 2017.

5. Project Leasing.

Borrower shall cause Units in the Project to be occupied by third-party residential tenants, in compliance with all applicable Laws and restrictions applicable to the Land, in accordance with the following:

50% of Units	January 31, 2017
90% of Units	June 30, 2017

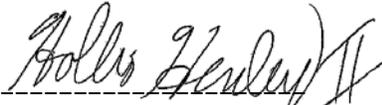
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**Water Quality Division
Application Team**

CERTIFICATE OF SERVICE

I certify that on July 15, 2016, the original and seven copies of the "Nantucket Housing, LLC's Application for an Order Authorizing Commencement of Construction" was filed with the TCEQ's Office of the Chief Clerk, and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, electronic submittal, or by deposit in the U.S. Mail.



Hollis Henley, Staff Attorney
Environmental Law Division
State Bar No. 24066672

MAILING LIST
NANTUCKET HOUSING, LLC
DOCKET NO. 2016-0787-MWD; PERMIT NO. WQ0015381001

FOR THE APPLICANT:

H. Chris Richardson, President
Nantucket Housing, LLC
9219 Katy Freeway, Suite 264
Houston, Texas 77024-1565

Katherine D. Hallaway, P.E.
Brown & Gay Engineers, Inc.
10777 Westheimer Road, Suite 400
Houston, Texas 77042-3475
Tel: (713) 488-8251
Fax: (713) 488-8250

FOR THE EXECUTIVE DIRECTOR

Via electronic mail:

Hollis Henley, Staff Attorney
Alicia Ramirez, Staff Attorney Texas
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Quality
Environmental Law Division,
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Larry Diamond, Technical Staff
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Brian Christian, Director
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FOR PUBLIC INTEREST COUNSEL

Via electronic mail:

Vic McWherter, Attorney
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Quality
Public Interest Counsel, MC-103
P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-6363
Fax: (512) 239-6377

FOR ALTERNATIVE DISPUTE
RESOLUTION

Via electronic mail:

Kyle Lucas
Texas Commission on Environmental
Quality
Alternative Dispute Resolution,
MC-222 P.O. Box 13087
Austin, Texas 78711-3087
Tel: (512) 239-4010
Fax: (512) 239-4015

FOR THE CHIEF CLERK:

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