

Kathleen Hartnett White, *Chairman*
R. B. "Ralph" Marquez, *Commissioner*
Larry R. Soward, *Commissioner*
Glenn Shankle, *Executive Director*



TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

Protecting Texas by Reducing and Preventing Pollution

March 30, 2006

TO: Persons on the attached mailing list.

RE: Sandy Creek Energy Associates, L.P.
TPDES Permit No. WQ0004755000

Decision of the Executive Director.

The executive director has made a decision that the above-referenced permit application meets the requirements of applicable law. **This decision does not authorize construction or operation of any proposed facilities.** Unless a timely request for contested case hearing or reconsideration is received (see below), the TCEQ executive director will act on the application and issue the permit.

Enclosed with this letter is a copy of the Executive Director's Response to Comments. A copy of the complete application, draft permit and related documents, including public comments, is available for review at the TCEQ Central office. A copy of the complete application, the draft permit, and executive director's preliminary decision are available for viewing and copying at the McLennan County Courthouse, 501 Washington Avenue, Waco, Texas.

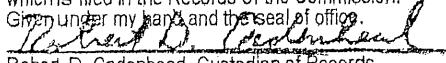
If you disagree with the executive director's decision, and you believe you are an "affected person" as defined below, you may request a contested case hearing. In addition, anyone may request reconsideration of the executive director's decision. A brief description of the procedures for these two requests follows.

How To Request a Contested Case Hearing.

It is important that your request include all the information that supports your right to a contested case hearing. You must demonstrate that you meet the applicable legal requirements to have your hearing request granted. The commission's consideration of your request will be based on the information you provide.

STATE OF TEXAS § APR 18 2006
COUNTY OF TRAVIS §

I hereby certify that this is a true and correct copy of a Texas Commission on Environmental Quality document, which is filed in the Records of the Commission.
Given under my hand and the seal of office.


Robert D. Cadenhead, Custodian of Records
Texas Commission on Environmental Quality

SANDY CREEK EX. 31
PAGE 1 OF 44

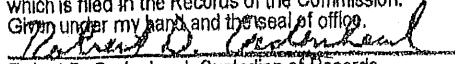
The request must include the following:

- (1) Your name, address, daytime telephone number, and, if possible, a fax number.
- (2) If the request is made by a group or association, the request must identify:
 - (A) one person by name, address, daytime telephone number, and, if possible, the fax number, of the person who will be responsible for receiving all communications and documents for the group; and
 - (B) one or more members of the group that would otherwise have standing to request a hearing in their own right. The interests the group seeks to protect must relate to the organization's purpose. Neither the claim asserted nor the relief requested must require the participation of the individual members in the case.
- (3) The name of the applicant, the permit number and other numbers listed above so that your request may be processed properly.
- (4) A statement clearly expressing that you are requesting a contested case hearing. For example, the following statement would be sufficient: "I request a contested case hearing."

Your request must demonstrate that you are an "affected person." An affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. Your request must describe how and why you would be adversely affected by the proposed facility or activity in a manner not common to the general public. For example, to the extent your request is based on these concerns, you should describe the likely impact on your health, safety, or uses of your property which may be adversely affected by the proposed facility or activities. To demonstrate that you have a personal justiciable interest, you must state, as specifically as you are able, your location and the distance between your location and the proposed facility or activities.

Your request must raise disputed issues of fact that are relevant and material to the commission's decision on this application. The request must be based on issues that were raised during the comment period. The request cannot be based solely on issues raised in comments that have been withdrawn. The enclosed Response to Comments will allow you to determine the issues that were raised during the comment period and whether all comments raising an issue have been withdrawn. The public comments filed for this application are available for review and copying at the Chief Clerk's office at the address below.

To facilitate the commission's determination of the number and scope of issues to be referred to hearing, you should: 1) specify any of the executive director's responses to comments that you dispute; and 2) the factual basis of the dispute. In addition, you should list, to the extent possible, any disputed issues of law or policy.

STATE OF TEXAS § APR 18 2006
COUNTY OF TRAVIS §
I hereby certify that this is a true and correct copy of a
Texas Commission on Environmental Quality document,
which is filed in the Records of the Commission.
Given under my hand and the seal of office.

Robert D. Cadenhead, Custodian of Records
Texas Commission on Environmental Quality

How To Request Reconsideration of the Executive Director's Decision.

Unlike a request for a contested case hearing, anyone may request reconsideration of the executive director's decision. A request for reconsideration should contain your name, address, daytime phone number, and, if possible, your fax number. The request must state that you are requesting reconsideration of the executive director's decision, and must explain why you believe the decision should be reconsidered.

Deadline for Submitting Requests.

A request for a contested case hearing or reconsideration of the executive director's decision must be in writing and must be **received by** the Chief Clerk's office no later than **30 calendar days** after the date of this letter: You should submit your request to the following address:

LaDonna Castañuela, Chief Clerk
TCEQ, MC-105
P.O. Box 13087
Austin, Texas 78711-3087

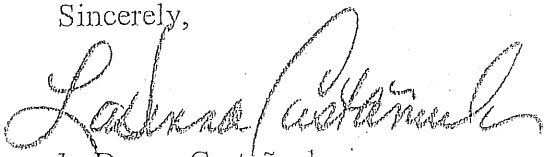
Processing of Requests.

Timely requests for a contested case hearing or for reconsideration of the executive director's decision will be referred to the alternative dispute resolution director and set on the agenda of one of the commission's regularly scheduled meetings. Additional instructions explaining these procedures will be sent to the attached mailing list when this meeting has been scheduled.

How to Obtain Additional Information.

If you have any questions or need additional information about the procedures described in this letter, please call the Office of Public Assistance, Toll Free, at 1-800-687-4040.

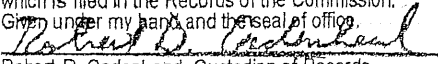
Sincerely,



LaDonna Castañuela
Chief Clerk

LDC/cz

Enclosures

STATE OF TEXAS § APR 18 2006
COUNTY OF TRAVIS §
I hereby certify that this is a true and correct copy of a
Texas Commission on Environmental Quality document,
which is filed in the Records of the Commission.
Given under my hand and the seal of office.

Robert D. Cadenhead, Custodian of Records
Texas Commission on Environmental Quality

MAILING LIST

for

Sandy Creek Energy Associates, L.P.
TPDES Permit No. WQ0004755000

FOR THE APPLICANT:

Andrew Dera
Sandy Creek Energy Associates, L.P.
Two Tower Center, 20th Floor
East Brunswick, New Jersey 08816-1100

Michael Vogt
Sandy Creek Energy Associates, L.P.
400 Chesterfield Center, Suite 110
St. Lois, Missouri 63017

Molly Cagle, Attorney
Vinson & Elkin LLP
2801 Via Fortuna, Suite 100
Austin, Texas 78746

PROTESTANTS/INTERESTED PERSONS:

See attached list.

FOR THE EXECUTIVE DIRECTOR:

Marc Friberg, Staff Attorney
Texas Commission on Environmental Quality
Environmental Law Division MC-173
P.O. Box 13087
Austin, Texas 78711-3087

Monica Baez, Technical Staff
Texas Commission on Environmental Quality
Water Quality Division MC-148
P.O. Box 13087
Austin, Texas 78711-3087

FOR OFFICE OF PUBLIC ASSISTANCE:

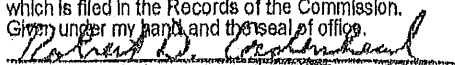
Jodena Henneke, Director
Texas Commission on Environmental Quality
Office of Public Assistance MC-108
P.O. Box 13087
Austin, Texas 78711-3087

FOR PUBLIC INTEREST COUNSEL:

Blas J. Coy, Jr., Attorney
Texas Commission on Environmental Quality
Public Interest Counsel MC-103
P.O. Box 13087
Austin, Texas 78711-3087

FOR THE CHIEF CLERK:

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

STATE OF TEXAS § APR 18 2006
COUNTY OF TRAVIS §
I hereby certify that this is a true and correct copy of a
Texas Commission on Environmental Quality document,
which is filed in the Records of the Commission.
Given under my hand and the seal of office.

Robert D. Cadenhead, Custodian of Records
Texas Commission on Environmental Quality

BRUCE ALLEN
8924 GLADEDALE
WACO TX 76712

DARRELL A CERVENKA
1965 MOUNT MORIAH RD
RIESEL TX 76682-3209

RALPH COOPER
PO BOX 729
WACO TX 76703

THE HONORABLE CHARLES "DOC" ANDERSON
TEXAS HOUSE OF REPRESENTATIVES
PO BOX 2910
AUSTIN TX 78768-2910

EDWARD R CERVENKA PE
2912 COHOBA DR
AUSTIN TX 78748-5072

SHARON CROSSLEY
1641 RICE RD
RIESEL TX 76682-3414

CHARLOTTE ANGELETTI
3400 HEARTHWOOD CIR
WACO TX 76708-2364

JO & ROBERT L CERVENKA
1965 MOUNT MORIAH RD
RIESEL TX 76682-3209

WILL DAILEY
PO BOX 314
WEST TX 76691

PHILIP BALLMANN
PO BOX 147
RIESEL TX 76682-0147

JO CERVENKA
1965 MOUNT MORIAH RD
RIESEL TX 76682-3209

BRENDA DEEMER
3136 LIPPIZAN ST
ROBINSON TX 76706

WILLIAM BARKER
1469 E LAKE CREEK RD
RIESEL TX 76682-2639

RANDALL CERVENKA
6527 ELK RD
WACO TX 76705-5016

THADDEUS DEJESUS STAFF WRITER
WACO TRIBUNE-HERALD
PO BOX 2588
WACO TX 76702-2588

BARBARA BATES
PO BOX 505
RIESEL TX 76682

ROBERT F CERVENKA
1965 MOUNT MORIAH RD
RIESEL TX 76682-3209

JOHN DEVRIES
2304 HERRING
WACO TX 76708

RICKY BATES
PO BOX 505
RIESEL TX 76682-0505

ROBERT L CERVENKA
1965 MT MORIAH RD
RIESEL TX 76692

LINDA ETHRIDGE
3003 BRAEMAR ST
WACO TX 76710-2124

MR & MRS BOHNE
1712 RAMADA DR
WACO TX 76712-8634

ROBERT CEVENKA
PO BOX 234
RIESEL TX 76683

WAYNE EVANS
2783 MOUNT MORIAH RD
RIESEL TX 76682-3209

JAY BRAGG
PO BOX 7555
WACO TX 76714-7555

RICHARD CHILDERS
2811 GRIM AVE
WACO TX 76707-2666

NOJAH FADAL
2508 ROCKVIEW
WACO TX 76710

BARBARA & GEORGE D BUSBY
BUSBY RD
RIESEL TX 76682-3200

ALISSA COONS
STE 1222
2000 S 1ST ST
WACO TX 76706-1245

DR TOM FRANK
C/O KATHY COLLINS OR PAULINE FRANK
4806 SWAN LAKE DR
WACO TX 76710

JIM GOODNOW
PO BOX 386
TERLINGUA TX 79852

ALBERT LEHRMANN
500 N BROADWAY
RIESEL TX 76682

DONALD PORT
400 W FREDERICK ST
RIESEL TX 76682-3437

RENA PAULETTE GUAY
803 S ADAMS ST
MCGREGOR TX 76657-2354

DAVID LEHRMANN
457 BUSBY RD
RIESEL TX 76682

DON E PRICE
712 COUNTY ROAD 163
MART TX 76664-5550

TONYA HEATH
2532 FM 66
ITASCA TX 76055-5107

MILLIE LEHRMANN
2334 MOUNT MORIAH RD
RIESEL TX 76682-3212

V R PRICE JR
713 CROOK LN
RIESEL TX 76682-2509

BILLY HEATON
397 POST OAK LN
RIESEL TX 76682-3426

MILLIE LEHRMANN
PO BOX 494
MILES TX 76661-0494

LEWIS PULLEY
2053 MOUNT MORIAH RD
RIESEL TX 76682-3209

SARAH HEGER
224 EARLE RD
HEWITT TX 76643-3611

TODD NAFA
PO BOX 283
HEWITT TX 76643-0283

LOREAN PULLEY
2053 MOUNT MORIAH RD
RIESEL TX 76682-3209

RAY HENDERSON
9508 BROOKHOLLOW
WOODWAY TX 76712-3207

GALE S NOLAN
17178 CLUB HILL DR
DALLAS TX 75248-1104

CRAIG & SANDY ROW
PO BOX 221
EDDY TX 76524-0221

JOHN HENDRY
3309 STURGIS LN
WACO TX 76708-1754

F LAWERENCE OAKS
TX HISTORICAL COMMISSION
PO BOX 12276
AUSTIN TX 78711-2276

BRETT SANDERS
1833 WOLF LN
VALLEY MILLS TX 76689-2832

MICHAEL HOWARD
2130 HERMANSON DR
WACO TX 76710-2620

ROBERT OLSON
915 W DENISON DR
ROBINSON TX 76706-4908

DAVID SCHIMSCHAT
711 N HILLVIEW ST
ROBINSON TX 76706-4803

GWYNNE & WALTER KRENEK
1337 WILBANKS DR
WACO TX 76705-5068

ROSS PILANT
596 MOUNT MORIAH RD
RIESEL TX 76682-3217

DORIS & JOHN SCHRAEDER
PO BOX 36
RIESEL TX 76682

WALTER G KUEHL
MILE RD
RIESEL TX 76682-2601

RUTH PILANT
596 MOUNT MORIAH RD
RIESEL TX 76682-3217

FAY SETZER
849 MOUNT MORIAH RD
RIESEL TX 76682-3209

ROY SETZER
849 MOUNT MORIAH RD
RIESEL TX 76682-3209

JENNIFER TUTUREA
1309 CHARLESTON
WACO TX 76705-2300

JOYCE SHANNON
845 MOUNT MORIAH RD
RIESEL TX 76682-3209

KAY UPTMORE
132 BOWIE LN
HEWITT TX 76643-3134

LAQUENTINE SHEPPARD
803 GLENWOOD
WACO TX 76705-2658

BOYCE VARDIMAN
1342 FOUR CORNERS RD
WEST TX 76691

TOM "SMITTY" SMITH DIRECTOR
PUBLIC CITIZEN - TEXAS
STE 300
1002 WEST AVE
AUSTIN TX 78701-2056

MARGIE WILBANKS REALTOR-BROKER
MARGIE WILBANKS REAL ESTATE
1693 WILBANKS DR
WACO TX 76705-5068

MILTON & NELL STABENO
717 W MARGARET ST
ROBINSON TX 76706-4920

DONALD & MARJORIE WILLIAMS
6116 OLD MEXIA RD
WACO TX 76705-4932

MAS STIMMEL
602 CHAMBERS
MARLIN TX 76661

ELIZABETH TAYLOR
308 RATTLESNAKE RD
RIESEL TX 76682-3315

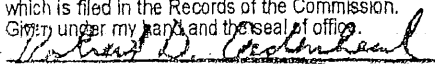
JOE TEPE
7256 OLD MARLIN RD
RIESEL TX 76682-3112

EDDIE THOMPSON
3085 TRADING POST RD
WACO TX 76705-5061

JENNIFER THOMPSON
DOWPOKE CIR
WACO TX 76705-5164

STATE OF TEXAS § APR 18 2006
COUNTY OF TRAVIS §

I hereby certify that this is a true and correct copy of a
Texas Commission on Environmental Quality document,
which is filed in the Records of the Commission.
Given under my hand and the seal of office.


Robert D. Cadenhead, Custodian of Records
Texas Commission on Environmental Quality

Application by
Sandy Creek Energy Associates, L.P.
for TPDES Permit No. WQ0004755000

§
§
§

Before the
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment (Response) on the application by Sandy Creek Energy Associates, L.P. (applicant) for a new Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004755000 and on the Executive Director's preliminary decision on the application. As required by 30 Texas Administrative Code (TAC) Section 55.156, before a permit is issued, the Executive Director prepares a response to all timely, relevant and material, or significant comments. The Office of Chief Clerk timely received comment letters and comments at the public meeting. The following people sent in identical comment letters and will be known as Group 1:

Jo Cervenka
Robert L. Cervenka
Alissa Coons
Tonya Heath
Michael Howard
Todd Nafe
Lorean Pulley
Brett Sanders

Fay Setzer
Roy Setzer
Joyce Shannon
Jennifer Tuturea
Kay Uptmore
Donald C. Williams
Marjorie R. Williams

CHIEF CLERKS OFFICE

APR 18 2008 2:29 PM

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

The following people sent in identical comment letters and will be known as Group 2:

Barbara J. Busby
George D. Busby
Jo Cervenka
Randall W. Cervenka
Robert L. Cervenka
Lorean Pulley

Doris Schraeder
John Schraeder
Joe Tepe
Eddie L. Thompson
Jeffery Thompson

The following people sent in identical comment letters and will be known as Group 3:

Richard Childers
Will Dailey
Brenda Deemer
Nojah Fadal
Sarah Heger
John Hendry

Ruth Pilant
Don E. Price
La Quentine Sheppard
Thomas Stummel
Jennifer Tuturea

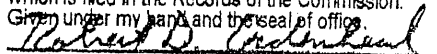
STATE OF TEXAS § APR 18 2008
COUNTY OF TRAVIS §
I hereby certify that this is a true and correct copy of a
Texas Commission on Environmental Quality document
which is filed in the Records of the Commission.
Given under my hand and the seal of office.
Robert D. Cadenhead, Custodian of Records
Texas Commission on Environmental Quality

The following people sent in individual comment letters, added individual comments on a form letter, or gave formal comments at a public meeting:

Tom "Smitty" Smith

Representing
Public Citizen,
Texas Office
Robert Cervenka
Co-Chairman
T.P.O.W.E.R.
Bruce Allen
Philip Ballmann
William Barker
Barbara Bates
Ricky Bates
Philip Bauman
Barbara J. Busby
George D. Busby
Derrell A. Cervenka
Edward R. Cervenka
Jo Cervenka
Randall W. Cervenka
Robert L. Cervenka
Richard Childress
Alissa Coons
Ralph Cooper
Sharon Crowsley
Will Dailey
Brenda Deemer
John Devries
Nojah Fadal
Dr. Thomas Frank
Jim Goodnow
Billy Heaton
Sarah Heger

Terry Henderson
John Hendry
Michael Howard
Walter Kuehl
Albert Lehrman
David Lehrman
Millie Lehrman
Todd Nafe
Gale Nolan
Ruth Pilant
Lewis Pulley
Lorean Pulley
Brett Sanders
Doris Schraeder
John Schraeder
Fay Setzer
Roy Setzer
Joyce Shannon
La Quentine Sheppard
Tom "Smitty" Smith
Thomas Stummel
Joe Tepe
Eddie L. Thompson
Jeffery Thompson
Jennifer Tuturea
Kay Uptmore
Boyce Vardiman
Donald C. Williams
Marjorie R. Williams

STATE OF TEXAS § APR 18 2006
COUNTY OF TRAVIS §
I hereby certify that this is a true and correct copy of a
Texas Commission on Environmental Quality document
which is filed in the Records of the Commission.
Given under my hand and the seal of office.

Robert D. Cadenhead, Custodian of Records
Texas Commission on Environmental Quality

This response addresses all comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

Sandy Creek Energy Associates, L.P. has applied to the TCEQ for a new TPDES permit that would authorize the discharge of cooling tower blowdown and previously monitored effluents (chemical metal cleaning waste from internal Outfall 101; low volume waste and coal pile runoff from internal Outfall 201) at a daily average flow not to exceed 2,600,000 gallons per day (gpd) via Outfall 001. The Sandy Creek Energy Station's (SCES) main water source is proposed to be the Waco Metropolitan Area Regional Sewerage System Treatment Facility (WMARSS). The effluent from WMARSS will be provided in accordance with the Texas Administrative Code Chapter 210 rules pertaining to the use of reclaimed water. In such case that the WMARSS effluent is of insufficient quality or quantity to meet the requirements of the SCES, supplemental water may be supplied by the City of Waco directly to SCES from the Brazos River. In addition, SCES may obtain groundwater for a limited number of services at the SCES. The wastewater quality associated with the use of groundwater will be consistent with the wastewater quality

associated with the use of WIMARSS effluent and the Brazos River.

Raw water will be pretreated to remove suspended solids and then routed to the cooling towers, Submerged Chain Conveyor (SCC) system, desulphurization (FGD) system and filters. Solids removed within the pretreatment system will be dewatered and transferred to either the solid waste disposal facility or removed from the site by a licensed hauler.

Cooling tower blowdown may be beneficially reused in the following units: FGD system, SCC system, and ash wetting. Cooling water is treated to control biological growth and scale on the cooling tower fill; and to inhibit corrosion and control pH. Cooling tower blowdown is discharged via Outfall 001.

Filter water will be used as needed for miscellaneous uses (floor/equipment wash and quenching of hot process streams, fire protection) and as feed to the reverse osmosis/demineralization system. Backwash from filters may be directed back to the raw water pretreatment system for further treatment and reuse. Reverse osmosis reject water will be discharged via internal Outfall 201. Wastewater from floor and equipment drains and storage areas potentially containing oil will be routed to the oil/water separator prior to discharge via internal Outfall 201. Storm water that could contain oil will be captured in containment dikes around the transformers and routed to the oil/water separator.

Mixed bed demineralizer, condensate polisher and chemical storage area drains will be routed to a neutralization tank for pH adjustment prior to combining with the low volume wastewater and discharge via internal Outfall 201. Demineralized water will be stored in a field-erected storage tank prior to use in the steam cycle. Demineralized water will also be used to backwash the mixed bed demineralizers and condensate polisher.

Chemical metal cleaning waste will be treated and disposed of off-site by a licensed 3rd party or will be treated by clarification, filtration and/or settling for solids removal prior to discharge via internal Outfall 101.

Storm water runoff from coal piles will be routed to a storm water runoff pond. Coal pile runoff will combine with low volume wastewater for further treatment. The combined coal pile runoff and low volume wastewater will meet New Source Performance Standards (NSPS) for total suspended solids and oil and grease prior to discharge from internal Outfall 201.

The proposed facility site is located on an approximately 700-acre parcel of land in and near the City of Riesel, Texas bounded by Rattlesnake Road on the west, north and east sides, and Farm-to-Market Road 1860 on the south side in McLennan County, Texas. The proposed effluent will be discharged from the plant site via pipeline to the Brazos River Above Navasota River, in Segment No. 1242 of the Brazos River Basin. The designated uses for Segment No. 1242 are high aquatic life use, contact recreation, and public water supply. No degradation of high quality receiving waters is anticipated.

Segment No. 1242 is currently listed on the State's inventory of impaired and threatened waters (the 2002 Clean Water Act Section 303(d) list). The listing is specifically for elevated levels of bacteria in the Lake Brazos area near the City of Waco.

Procedural Background

The application was received on October 22, 2004, and declared administratively complete on December 29, 2004. Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) was published on January 5, 2005, in the *Riesel Rustler* and the *Waco Tribune Herald*. The TCEQ Executive Director completed the technical review of the application on April 8, 2005, and prepared a draft permit. Notice of Application and Preliminary Decision (NAPD) was published on September 2, 2005, in the *Riesel Rustler* and the *Waco Tribune Herald*. Notice of a Public Meeting on an Application for a Water Quality TPDES Permit for Industrial Wastewater (Notice of Public Meeting) was published on November

4, 2005, in the *Reisel Rustler* and the *Waco Tribune Herald*. After cancellation of the public meeting due to inclement weather, an additional Notice of Public Meeting was published on December 23, 2005, in both the *Reisel Rustler* and *Waco Tribune Herald*. The public meeting was held on January 12, 2006, in Reisel, Texas. This application was administratively complete on or after September 1, 1999; therefore, this application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

COMMENT 1: There is concern that the discharge from the proposed facility will result in pollution to the Brazos River.

Donald C. Williams and Marjorie R. Williams are concerned about pollution in the river. Group #2 feels that the discharge of 2.6 million gallons of cooling water into the Brazos River each day will result in chemical pollution to the river. John Devries is concerned about water pollution. John Schraeder and Doris Schraeder are concerned about river pollution, about the wildlife becoming polluted, and about chemical pollution. Robert L. Cervenka and Jo Cervenka comment that L.S. Power plans to build a coal fired power plant that will dump polluted water into our river.

RESPONSE 1:

When the TCEQ receives a permit application it goes through an administrative and technical review. The administrative review determines if the Administrative Report has been completed correctly. The technical review begins with the Water Quality Assessment Section (WQAS). This Section provides recommendations used in the draft permit. The WQAS determines the designated uses of the segment water body that will receive the proposed discharge, the critical conditions for the water body (i.e. low flow) when the water body is most susceptible to adverse effects, the limitations to ensure the dissolved oxygen criteria for the water body is maintained, and the whole-effluent toxicity testing requirements.

Once the WQAS's review is completed, the permit application is assigned to a permit writer who develops two sets of permit limits. The permit writer reviews the information about the facility and the proposed discharge and develops technology-based effluent limitations based on federal effluent guidelines. Using the permit application and recommendations from the WQAS, the permit writer develops water quality-based effluent limitations. The permit writer then compares the technology-based effluent limitations with the water quality-based effluent limitations and applies the more stringent limits in the draft permit.

Because this is a proposed facility that has not been constructed, no effluent data were submitted with the application. Therefore, the proposed permit requires that the initial discharges be sampled and analyzed for a series of pollutants to be screened against the concentrations necessary to protect the water quality criteria. If the permit is issued, the effluent data will be compared against the water quality-based permit limits contained in Appendix B of the Statement of Basis/Technical Summary. If the effluent data show pollutants that have the potential to exceed the water quality criteria, the permit will be re-opened and additional monitoring, effluent limits, and/or other controls may be added to the permit. The TCEQ developed effluent limitations for temperature, a known pollutant for this type of discharge, consistent with Texas Surface Water Quality Standards (30 TAC Chapter 307).

Technology-based effluent limitations in the draft permit were developed using Title 40 Code of Federal Regulations (CFR) Part 423- Steam Electric Power Generating. Two internal monitoring points were created to analyze the wastewater prior to mixing with other wastewaters. The limitations and monitoring requirements established in the draft permit are listed below.

<u>Outfall</u>	<u>Parameter</u>	<u>Daily Avg</u>	<u>Daily Max</u>	<u>Monitoring Frequency</u>
001	Flow (MGD)	(2.6)	(3.0)	Continuous
	Free Available Chlorine	0.2 mg/l	0.5 mg/l	1/week
	Temperature (°F)	(95)	(95)	1/week
	pH	6.0 (min)	9.0 (max)	1/week

<u>Outfall</u>	<u>Parameter</u>	<u>Daily Avg</u>	<u>Daily Max</u>	<u>Monitoring Frequency</u>
101	Flow (MGD)	(Report)	(Report)	1/day
	Total Suspended Solids			
	Solids	30 mg/l	100 mg/l	1/week
	Oil and Grease	15 mg/l	20 mg/l	1/week
	Total Iron	1.0 mg/l	1.0 mg/l	1/week
	Total Copper	1.0 mg/l	1.0 mg/l	1/week
	pH, S.U.	6.00 (min)	9.00 (max)	1/week
201	Flow (MGD)	(Report)	(Report)	1/day
	Total Suspended Solids	30 mg/l	100 mg/l	1/week
	pH	6.0 (min)	9.0 (max)	1/week

The draft permit also contains Whole Effluent Toxicity (WET) testing. WET testing is designed to measure the aggregate toxic effect of a mixture of pollutants in the effluent and the receiving water. WET tests measure the degree of response of exposed aquatic test organisms to an effluent. If a WET test shows that the effluent has the potential to cause lethal effects in the receiving stream, the permittee is required to identify the toxicant or toxicants and reduce or eliminate the toxicity of the effluent. The draft permit requires 48-hour Acute and 24-hour, 100% Effluent Acute toxicity testing.

As a result of this comment, additional sampling requirements have been added to the draft permit. The draft permit now requires that the permittee sample for Volatile Compounds and Acid Compounds found in Table 7 of the wastewater permit application. If the proposed permit is issued, the effluent limitations and required additional effluent testing are designed to be protective of the water quality in the receiving stream.

The TCEQ conducts routine inspections of facilities to ensure the facility complies with their authorizations and that all authorizations are obtained properly. Any observance or complaints about discharges from this facility can be reported for investigation to the TCEQ Region 9 Office in Waco at (254)751-0335, or by using the statewide toll-free number at 1-888-777-3186. Citizen complaints may also be filed on-line at <http://www.tnrc.state.tx.us/cgi-bin/enforcement/complaints>. If the facility is found to be out of compliance with the terms or conditions of its permit or with TCEQ regulations, it may be subject to enforcement.

COMMENT 2: Group #1 is concerned that the discharges from the facility will result in chemical pollution to the river. Effects of this pollution include reductions in dissolved oxygen levels and changes to biological oxygen demand (BOD), significantly impacting the rivers ability to support aquatic life.

RESPONSE 2:

The WQAS conducts an evaluation of the potential effects of the discharge on the receiving stream's dissolved oxygen. The effects of a discharge on dissolved oxygen in a receiving water are evaluated at the seven-day, two-year low flow (7Q2). The 7Q2 of the Brazos River, based on daily average flows measured at USGS gauge 08096500 located upstream of the proposed discharge point, is 87 cubic feet per second. The proposed discharge of 2.6 million gallons per day makes up only 4.4 percent of the 7Q2 of the Brazos River. Based on the relative size of the discharge to the 7Q2 of the Brazos River, the TCEQ does not expect the discharge to cause a significant adverse impact on dissolved oxygen in the Brazos River. In addition, the draft permit includes testing requirements for biochemical oxygen demand (BOD) and ammonia-nitrogen (NH₃-N). A testing requirement will also be added for dissolved oxygen. These three substances exert the most influence on dissolved oxygen in the receiving water. The results of these tests will be evaluated using a numerical model to determine if monitoring or limits for any of these substances are needed. If so, the appropriate requirements will be added to the permit.

COMMENT 3: There is concern over potential thermal pollution to the Brazos River.

Group #1 and Group #2 are concerned that the discharges from the plant will result in thermal pollution to the river, and that discharging high temperature water into the Brazos River will lower the dissolved oxygen content of the river's water and will thus impact fish and other forms of aquatic life. Public Citizen is concerned that higher temperature discharges will adversely affect the receiving stream as well as the wildlife and aquatic habitat that rely on the Brazos River.

RESPONSE 3:

The Executive Director (ED) recognizes that temperature is a potential pollutant in this proposed discharge. Therefore, the draft permit contains a temperature limit at Outfall 001 of 95°F. This is the temperature criterion listed in Appendix A in the Texas Surface Water Quality Standards for the Brazos River Above Navasota River, Segment 1242 and it is being applied at Outfall 001.

The ED typically assumes that the percent saturation of dissolved oxygen in a water body is 80 percent. Based on temperature and dissolved oxygen data collected in Segment 1242, most summertime percent saturation values were well above 80 percent. At the effluent temperature limit of 95°F, the dissolved oxygen concentration that corresponds to 80 percent saturation is 5.55 mg/L, which is still above the 5 mg/L dissolved oxygen criterion that was established to protect the high aquatic life use for Segment 1242. Therefore, the ED does not expect the temperature of the discharge to cause a violation of the dissolved oxygen criterion or to adversely impact fish and other forms of aquatic life in Segment 1242.

COMMENT 4: Public Citizen and T.P.O.W.E.R are concerned about how temperature limits in the permit application were developed. A supplemental from Sandy Creek proposes a methodology for calculating an appropriate temperature limitation that is different from the initially recommended temperature limitation of 95°F. This alternative approach would appear to allow staff to develop a standard that allows discharge of water that exceeds this 95° F limitation.

RESPONSE 4:

The initial draft permit contained a temperature limit of 95°F as described in Comment 3. Upon receipt of the draft permit the applicant requested that the ED consider using a temperature of 120°F. In order to determine if there would be any impacts on the receiving water, the ED recommended that the permittee provide additional analysis using a CORMIX model or similar model. However, the applicant withdrew their request and agreed to maintain the temperature criterion listed in Appendix A in the Texas Surface Water Quality Standards for the Brazos River Above Navasota River, Segment 1242. The draft permit contains a temperature limit of 95°F at Outfall 001.

COMMENT 5: There is concern that the discharge from the proposed facility will adversely affect the recreational use of the Brazos River.

Bruce Allen feels that the permit does not adequately address the concerns of recreational users of the Brazos River. Fay Setzer, Roy Setzer, Joyce Shannon, Todd Nafe, George D. Busby, Barbara J. Busby, Brenda Deemer, Alissa Coons, and Randall W. Cervenka are concerned that their recreation on the Brazos will be adversely affected. Group #1 feels that water discharged from this plant will impact their quality of life, including but not limited to reductions in the quality of the Brazos River for recreational uses. Group #2 feels that water discharged from the plant will lead to reductions in the quality of the Brazos River for recreational uses. Richard Childress is concerned that his enjoyment of the Brazos River will be diminished by this plant.

RESPONSE 5:

The purpose of the TSWQS is to maintain the quality of water in the state and to protect human health. The ED uses fecal coliform as an indicator of recreational suitability in effluent limits for TPDES wastewater discharges. Indicator bacteria, although not generally pathogenic, are indicative of potential contamination

by feces of warm blooded animals. The level of fecal coliform that is considered a concern for potential contamination by feces of warm blooded animals is 200 colonies per 100 ml or greater. The proposed facility plans to use treated domestic wastewater from the City of Waco. The wastewater permit for the City of Waco requires the facility to disinfect the effluent to remove harmful bacteria and most other disease causing organisms. The proposed facility will not be contributing additional domestic wastewater to the discharge. Therefore, the ED did not include a chlorination requirement in the draft permit.

COMMENT 6: An unidentified person states that the permit does not meet the statutes, rules, and requirements of the state and that there has been a rush to approval.

RESPONSE 6:

The draft permit has been processed according to the standard TCEQ procedures used for processing other applications for wastewater discharge and according to all applicable rules and requirements of the State of Texas. Many of these rules and procedures are described in other responses in this document. The Environmental Protection Agency reviewed the draft permit in August 2005 and provided no additional comments and/or objections. Therefore, the draft permit should meet all applicable state and federal rules regarding wastewater discharge permitting.

COMMENT 7: There is support for the proposed facility.

Billy Heaton and Sharon Crowsley would like to see the permit approved. Walter Kuehl states that everyone must get behind this project 110% and make it happen and happen in an expedient manner. He requests that the TCEQ grant the wastewater permit to Sandy Creek Associates and do it in a prompt manner. William Barker supports the plant.

RESPONSE 7:

The ED acknowledges the comments.

COMMENT 8: There is a belief that Texas has plenty of energy.

Boyce Vardiman states that we don't need more power in this location now. Bruce Allen states that Texas has plenty of energy. It's got more energy capacities than we need.

RESPONSE 8:

The permit application review for a TPDES permit is limited to the wastewater treatment and/or disposal operations proposed at the facility. TCEQ does not have the authority to determine the amount of energy that is required by the State of Texas or to limit the number of energy providers. In the evaluation of the permit application, the feasibility or need for electricity cannot be considered by the ED in developing the proposed wastewater discharge permit.

COMMENT 9: Boyce Vardiman wants to know why the TCEQ won't require coal gasification.

RESPONSE 9:

Under TCEQ's current regulations, policies, and practices, coal gasification cannot be required for coal fired power plant applications. In answering a certified question at its December 14, 2005 Agenda, the TCEQ stated that Integrated Gasification Combined Cycle (IGCC) technology is not to be considered in a Best Available Control Technology (BACT) analysis. A webcast of that Agenda may be downloaded from TCEQ's website at <http://home.tceq.state.tx.us/internal/comm/cco/webcasts.html>.

In addition, TCEQ does not determine what type of process will be use to generate energy at a facility when

drafting a wastewater permit. The permit application review for a NPDES permit is limited to the wastewater treatment and/or disposal operations proposed at the facility.

COMMENT 10: Bruce Allen doesn't think the permit is enforceable.

RESPONSE 10:

The draft permit was developed according to the applicable state and federal regulations. The draft permit contains effluent limitations, standard provisions, and permit-specific provisions typically found in other wastewater discharge permits. If the permit is issued, all of the limitations and provision become enforceable requirements of the permit. Therefore, the draft permit should be enforceable.

Because many wastewater discharge permits are developed in accordance with federal regulations, EPA oversees TCEQ's enforcement of wastewater issues. In addition to monthly self-reporting requirements and wastewater treatment plant inspections, TCEQ relies on citizen complaints to help ensure compliance with its rules and permits. Citizens may contact the TCEQ at 1-888-777-3186, the regional office in Waco at (254)751-0335, or by e-mail at cmplaint@TCEQ.state.tx.us to report suspected violations or to file a complaint.

COMMENT 11: Bruce Allen objects to the piecemeal permitting process.

RESPONSE 11:

TCEQ's current practice involves separate permitting processes and requirements for wastewater permits and other media such as air permits or solid waste permits. These procedures were followed in the drafting of this proposed permit.

COMMENT 12: Bruce Allen states that the tourism from a clean river is going to be lost to our citizens and future generations, and that this plant will contribute to it.

RESPONSE 12:

The draft permit contains effluent limitations and provisions designed to protect the designated uses of the Brazos River. The designated uses and dissolved oxygen criterion, as stated in Appendix A of the TSWQS 30 TAC Section 307.10, for Segment 1242 are contact recreation, public water supply, high aquatic life use, and 5.0 mg/L dissolved oxygen. As discussed in Response 1, the draft permit is designed to be protective of the applicable water quality criteria.

COMMENT 13: There are concerns about the amount of and type of information contained in the permit application

Darrell A. Cervenka, Jo Cervenka, Randall W. Cervenka, Lewis Pulley, and Tom Smith feel that the application is not complete. Lewis Pulley is concerned about lack of detail in parts of the application, and feels the treatment process should be specified. Public Citizen and T.P.O.W.E.R. state that they do not believe that the original application satisfies the TCEQ's requirements in that it fails to contain all of the information needed and, in fact, required to support issuance. They also feel that there is not sufficient information present in the application to show that the proposed discharges will satisfy Texas surface water quality standards and policies, as set forth in 30 TAC Chapters 307 and 319. Public Citizen and T.P.O.W.E.R. state that Sandy Creek failed to complete Worksheet No. 4 and thereby failed to provide the technical basis on potential impacts on the receiving waters to enable the staff to come to any conclusion with respect to compliance with state surface water quality standards and policies.

RESPONSE 13:

ED staff reviewed the application and concluded that the required information was submitted in the application. Specifically, the ED staff reviewed Worksheet No. 4 of the application and determined that it was filled out correctly. However, as discussed in Response 1, no effluent data were submitted because the facility has not been constructed.

COMMENT 14: There is concern about underground springs becoming contaminated and the proposed facility not having the appropriate permit for the discharge of pollutants from the springs.

Darrell A. Cervenka states that it is well known that the project site is located on the Brazos terraces and spring water discharge is not included in any water quality application for a TPDES permit. Ralph Cooper thinks that the springs that discharge from the ground water from under that plant constitute point sources under the law, at least the federal law, if not the state law. It should be required to have a NPDES permit or a TPDES permit for those spring water discharges if there's a remote possibility that the leachate from anything done on the site gets to the groundwater. Lewis Pulley states that groundwater on the site discharges to the surface, leading to the river. The facility should not be allowed to have any unpermitted discharges through the springs of constituents, from the two ponds, the coal pile and the solid waste (ash) disposal facility. A natural "pipe" should not be an unpermitted discharge point.

RESPONSE 14:

The proposed facility did not request, nor does the permit authorize the final disposal of wastewater on the land or to the springs. The draft permit authorizes the discharge of wastewater via pipeline from Outfall 001 to the Brazos River. Facilities must conform with TCEQ regulations that prohibit unauthorized bypasses or unauthorized discharges of untreated or partially treated wastewater.

Number 10 of Other Requirements in the draft permit also requires that wastewater ponds be lined according to one of the following requirements:

1. **Soil Liner:** The soil liner shall contain at least 3 feet of clay-rich (liquid limit greater than or equal to 30 and plasticity index greater than or equal to 15) soil material along the sides and bottom of the pond compacted in lifts of no more than 9 inches, to 95% standard proctor density at the optimum moisture content to achieve a permeability equal to or less than 1×10^{-7} cm/sec.
2. **Synthetic/Plastic/Rubber Liner:** The liner shall be either a plastic or rubber membrane liner at least 30 mils in thickness which completely covers the sides and the bottom of the pond and which is not subject to degradation due to reaction with wastewater with which it will come into contact. If this lining material is vulnerable to ozone or ultraviolet deterioration it should be covered with a protective layer of soil of at least 6 inches. A leak detection system is also required.
3. **Alternate Liner:** The permittee shall submit plans for any other pond lining method. Pond liner plans must be approved in writing by the Executive Director of the Texas Commission on Environmental Quality prior to pond construction.

Therefore, the TCEQ is not proposing to authorize a discharge to the springs with this draft permit, and the pond liner requirements are designed to prevent wastewater from entering the groundwater.

As a result of this comment a clarification has been added to the provision. The first sentence of the provision is now proposed to read:

The draft permit also requires that wastewater ponds (*including the coal pile runoff pond*) be lined according to one of the following requirements:

COMMENT 15: Dr. Thomas Frank and Gale Nolan state that pipes will leak, valves will malfunction and spills will happen. When it does happen, some will soak into the ground and some will be washed away. When it soaks in, it will contaminate the groundwater that they use for drinking water. When it is washed away, it will come across their property and contaminate it.

RESPONSE 15:

The draft permit has a provision that requires the permittee to ensure that the facility and all of its systems of collection, treatment, and disposal are properly operated and maintained at all times. This includes, but is not limited to, the regular, periodic examination of wastewater solids within the treatment plant by the operator in order to maintain an appropriate quantity and quality of solids inventory as described in the various operator training manuals and according to accepted industry standards for process control. The operator shall continually make process control, maintenance, and operations records. The facility shall retain such records, or have them readily available for review by a TCEQ representative, for a period of three years.

The permittee also indicated in the permit application that they will get a Multi-Sector General Permit (MSGP). This MSGP provides authorization for point source discharges of storm water associated with industrial activity to water in the state. The General Permit contains effluent limitations and requirements applicable to all industrial activities that are eligible for coverage under this MSGP. The General Permit requires the permittee to implement, Best Management Practices (BMPs), including schedules of activities, prohibitions of practices, maintenance procedures, and other techniques to control, prevent or reduce the discharge of pollutants to water in the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spills or leaks, sludge or waste disposal, or drainage from raw material storage area.

COMMENT 16: Group #1 and Group#2 are concerned that the water discharges will contain a number of contaminants, including fungicides and algacides, as well as soaps, pharmaceuticals, and household cleaners that are concentrated into the discharge stream, all of which may have negative impacts on aquatic life and the potential of the river to be used for recreational purposes.

RESPONSE 16:

The draft permit contains Whole Effluent Toxicity (WET) testing. WET testing is designed to measure the aggregate toxic effect of a mixture of pollutants in the effluent and the receiving water. WET tests measure the degree of response of exposed aquatic test organisms to an effluent.

Some studies have shown that subtle effects to aquatic organisms can occur at elevated concentrations of prescription drugs. Ongoing research is being conducted on a national level to assess any potential effects of prescription drugs in wastewater effluent. Data are limited, but perceptible impacts in aquatic environments have not been established.

COMMENT 17: There is concern about contaminants.

Joyce Shannon wants to know what contaminants will be present and what are the effects they will have on the environmental food chain and on the people who live here? Jo Cervenka is concerned about contamination of the river. Roy Setzer is concerned about contamination of water. La Quentine Sheppard is concerned about the contamination of the water and about the future of fishing in the Riesel area. Dr. Thomas Frank and Gale Nolan state that they know that the Waco wastewater stinks and has contaminants in it. Add the large amounts of chemicals that will be used by the plant and the large piles of coal, and there is a toxic soup. Fay Setzer and Roy Setzer are frightened by the types of contaminants

that they will be exposed to. They are not sure what types of contaminants besides mercury that they will be exposed to.

RESPONSE 17:

For a discussion on the effluent limitations and protection of the applicable water quality criteria, please see Response 1. This approach is designed to be protective of the receiving stream from toxic effects from the effluent.

COMMENT 18: There is concern over the health and quality of life of both humans and animals.

Dr. Thomas Frank, Gale Nolan, Ricky Bates, Barbara Bates, Philip Ballmann, David Lehrman, Albert Lehrman, Millie Lehrman, Jim Goodnow, Kay Uptmore, Joe Tepe, and Brenda Deemer are concerned about their health, the health of their families, and the health of others. Ricky Bates wants to know what the possible effects will be to humans, crops, and livestock due to the chemicals that will be added to the incoming sewer water. Lorean Pulley is concerned about the fish in the river. Joyce Shannon also wants to know what are the effects going to be on the environmental food chain and on the people who live near the plant. Robert L. Cervenka is concerned about the affect of the discharge on the river and its fish. Eddie L. Thompson and Lorean Pulley are concerned that there will be an adverse affect on their and their family's quality of life. Group #1 feels that water discharged from this plant will impact their quality of life, including but not limited to reductions in the quality of the Brazos River for all uses. Group #2 feels that the discharge of this treated wastewater will harm residents' quality of life. Fay Setzer, Roy Setzer, and Joyce Shannon are concerned about fish and wildlife being poisoned and about fish and livestock drinking the water. Group #2 feels that the discharges of this treated wastewater will violate the Clean Water Act by contaminating the Brazos River and decreasing its quality for human consumption and contact use as well as its ability to sustain aquatic life. Group #3 wants to know about the fish in the river and lakes, will they be edible? Jim Goodnow is concerned about water quality. Lewis Pulley states that deposition of coal constituents may affect aquatic life in the rivers and lakes of the Bosque and Brazos River Basins, including whether the fish will be edible and whether they will be able to reproduce.

RESPONSE 18:

The purpose of the TSWQS is to maintain the quality of water in the state and to protect human health, terrestrial wildlife, livestock, domestic animals, and aquatic life along the discharge route. The designated uses and associated criteria in Appendix A of the TSWQS for Segment 1242, Brazos River Above Navasota River, was used to evaluate the permit application. Segment 1242 has the following designated uses: contact recreation, public water supply, a high aquatic life use, and a corresponding 5.0 mg/L dissolved oxygen criterion. The draft permit has been designed to protect human health resulting from contact recreation, consumption of aquatic organisms, and consumption of drinking water. It has also been designed to preclude adverse toxic effects on aquatic life, terrestrial wildlife, livestock, or domestic animals resulting from contact, consumption of aquatic organisms, or consumption of water. The draft permit includes testing requirements for a wide variety of pollutants. The results will be evaluated and additional requirements added to the permit if necessary to protect the water quality criteria. Please see Response number 1.

The confluence of the Bosque River and Brazos River is located almost 19 miles upstream of the proposed discharge; therefore, the Bosque River will not receive the proposed discharge.

COMMENT 19: There is concern about flooding and drainage issues.

Dr. Thomas Frank and Gale Nolan state that they have, over the years, had an ongoing problem with drainage. They have a low water crossing that several times a year is under water from runoff. Most of that runoff originates on the property where the proposed plant is to be built. Ricky Bates and Barbara

Bates state that during periods of heavy rain, more than 50% of the water that runs across their property will come from the plant site property. Due to the lay of the land, anything that is picked up by heavy rains will be deposited on their property. This is such a problem that several times a year, they state that they will be trapped either on or off their property, due to the runoff from the plant site property. Robert L. Cervenka and Jo Cervenka state that they once leased land across the Rattlesnake Road and have seen the creek that drains this land run twenty feet high after a five inch rain. There has been as much as ten inches of rain at one time in this area.

RESPONSE 19:

TCEQ cannot address flooding and/or drainage issues in the wastewater permitting process, unless there is a potential impact to water quality. The permitting process is limited to controlling the discharge of pollutants into or adjacent to water in the state, and to protecting the water quality of the state's rivers, lakes, and coastal waters.

Page number 1 of the draft permit does include the following language:

The issuance of this permit does not grant to the permittee the right to use private or public property for conveyance of wastewater along the discharge route described in this permit. This includes, but is not limited to, property belonging to any individual, partnership, corporation or other entity. Neither does this permit authorize any invasion of personal rights nor any violation of federal, state, or local laws or regulations. It is the responsibility of the permittee to acquire property rights as may be necessary to use the discharge route.

For a discussion on the storm water requirements, please see Response 32.

COMMENT 20: There is concern over a possible adverse effect on agricultural operations.

Eddie L. Thompson is concerned about the adverse affect that may be had on agricultural operations. Fay Setzer and Roy Setzer are worried about contamination to the fish in the rivers and the crops that are irrigated. Joyce Shannon is concerned that farmers who irrigate and ranchers who have stock will have to worry about contaminants. Robert L. Cervenka and Jo Cervenka state, that as they understand, chemicals will have to be added to neutralize the wastewater. They want to know what this will do to people downstream who are using river water, such as cities, farmers and ranchers who irrigate with water from the river.

RESPONSE 20:

The purpose of the TSWQS is to maintain the quality of water in the state and to protect human health, livestock, domestic animals, and aquatic life along the discharge route. The designated uses and associated criteria in Appendix A of the TSWQS for Segment 1242, Brazos River Above Navasota River, was used to evaluate the permit application. Segment 1242 has the following designated uses: contact recreation, public water supply, a high aquatic life use, and a corresponding 5.0 mg/L dissolved oxygen criterion. The draft permit has been designed to protect human health resulting from contact recreation, consumption of aquatic organisms, and consumption of drinking water. It has also been designed to preclude adverse toxic effects on aquatic life, livestock, or domestic animals resulting from contact, consumption of aquatic organisms, or consumption of water. The draft permit includes testing requirements for a wide variety of pollutants. The results will be evaluated and additional requirements added to the permit if necessary. See Response 1.

COMMENT 21: There is concern about a possible adverse effect to the water table.

Fay Setzer and Roy Setzer state that they all have wells and ponds that their stock and they drink from. There seems to be a lot of things that are not covered about protecting the water table from which they get

their water. Joyce Shannon is concerned about the water table getting contaminated and is worried about the water table. Michael Howard is concerned that the discharge will adversely affect the water table. Robert L. Cervenka and Jo Cervenka want to know what this dumping will do to our water table and are concerned about their water supply being affected by contaminants.

RESPONSE 21:

The proposed facility will not dispose of wastewater on land. The wastewater will be discharged via pipeline from Outfall 001 to the Brazos River. The draft permit contains effluent limitations that must be met prior to discharge for the protection of the designated uses for this segment. Please see Response 1 for additional information.

The draft permit includes requirements for lining storm water runoff ponds at this facility, found at Other Requirements No. 10. If the ponds are constructed, maintained, and operated according to the requirements of the draft permit, wastewater should not migrate downward through the liner and should pose no risk to area groundwater sources. Please Refer to Response No. 14.

The permittee also indicated in the permit application that they will get a MSGP. This MSGP provides authorization for point source discharges of storm water associated with industrial activity to water in the state. The General Permit contains effluent limitations and requirements applicable to all industrial activities that are eligible for coverage under this MSGP. The General Permit requires the permittee to implement, Best Management Practices (BMPs), including schedules of activities, prohibitions of practices, maintenance procedures, and other techniques to control, prevent or reduce the discharge of pollutants to water in the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spills or leaks, sludge or waste disposal, or drainage from raw material storage area.

COMMENT 22: Fay and Roy Setzer want to know if the water table is contaminated, who will be responsible for cleaning it up, if it is even possible.

RESPONSE 22:

The Texas Water Code, Section 26.121 states that, except as authorized by the Commission, no person may discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state. The draft permit for SCES does not permit wastewater discharges to the water table. Therefore, if a discharge to the water table occurs, the responsible owner and/or operator will be responsible for cleanup. However, at this time, it is not possible for a specific person or company to be given the responsibility of cleaning up a potential contamination. Responsibility can only be determined if such a contamination takes place.

COMMENT 23: There are requests that the treatment process be specified in detail.

Fay Setzer and Roy Setzer hope that a treatment process is specified in detail. Randall W. Cervenka asks how a permit can be issued when the treatment process authorized by the permit is not specified. Group #3 requests that a treatment process authorized by the permit be specified in detail before a wastewater permit is issued.

RESPONSE 23:

While the TCEQ cannot dictate a specific treatment process for the treatment of the wastewater, the permit application requires the applicant to list any physical, chemical, and/or biological treatment process that will be used for the treatment of wastewater. The permit application also requires the applicant to provide a flow diagram of each treatment unit and all sources of wastewaters that flow into the treatment plant and to each outfall.

The wastewater treatment system is describe on pages 1-2 of the Statement of Basis/Technical Summary as follows:

Raw water will be pretreated to remove suspended solids and then routed to the cooling towers, Submerged Chain Conveyor (SCC) system, desulphurization (FGD) system and filters. Solids removed within the pretreatment system will be dewatered and transferred to either the solid waste disposal facility or removed from the site by a licensed hauler.

Cooling tower blowdown may be beneficially reused in the following units: FGD system, SCC system, and ash wetting. Cooling water is treated to control biological growth and scale on the cooling tower fill, and to inhibit corrosion and control pH. Cooling tower blowdown is discharged via Outfall 001.

Filter water will be used as needed for miscellaneous uses (floor/equipment wash and quenching of hot process streams, fire protection) and as feed to the reverse osmosis/demineralization system. Backwash from filters may be directed back to the raw water pretreatment system for further treatment and reuse. Reverse osmosis reject water will be discharged via internal Outfall 201. Wastewater from floor and equipment drains and storage areas potentially containing oil will be routed to the oil/water separator prior to discharge via internal Outfall 201. Storm water that could contain oil will be captured in containment dikes around the transformers and routed to the oil/water separator.

Mixed bed demineralizer, condensate polisher and chemical storage area drains will be routed to a neutralization tank for pH adjustment prior to combining with the low volume wastewater and discharge via internal Outfall 201. Demineralized water will be stored in a field-erected storage tank prior to use in the steam cycle. Demineralized water will also be used to backwash the mixed bed demineralizers and condensate polisher.

Chemical metal cleaning waste will be treated and disposed of off-site by a licensed 3rd party or will be treated by clarification, filtration and/or settling for solids removal prior to discharge via internal Outfall 101.

Storm water runoff from the coal piles (coal pile runoff) will be routed to a storm water runoff pond. Coal pile runoff will combine with low volume wastewater for further treatment. The combined coal pile runoff and low volume wastewater will meet NSPS for total suspended solids and oil and grease prior to discharge from internal Outfall 201.

COMMENT 24: There is concern about a possible adverse effect to drinking water.

Fay Setzer, Roy Setzer, Joyce Shannon, Todd Nafe, Thomas Stummel, Brenda Deemer, and Jennifer Tuturea are concerned about their drinking water being adversely affected. Joyce Shannon is worried about the contaminants that will be released from the Coal Plant site, and she is worried about the people downstream who get their drinking water from the Brazos River. Randall W. Cervenka states that deposition of coal constituents in the Bosque River Basin will lead to increased concentrations in the Waco water supply and Waco wastewater as well as the Brazos River. He asks how such increases in contaminants loads will affect the drinking water for Waco and surrounding communities from bodies of water, rivers and ground water, both above and below discharge points of this plant, and if it will not affect the drinking water, why not.

RESPONSE 24:

The purpose of the TSWQS is to maintain the quality of water in the state and to protect human health along the discharge route. The designated uses and associated criteria in Appendix A of the TSWQS for

Segment 1242, Brazos River Above Navasota River, was used to evaluate the permit application. Segment 1242 has a designated public water supply use. The draft permit has been designed to protect human health resulting from consumption of drinking water. The draft permit includes testing requirements for a wide variety of pollutants. The results will be evaluated and additional requirements added to the permit if necessary. Please see Response 1 for more information on effluent limits and effluent evaluation.

The confluence of the Bosque River and Brazos River is located almost 19 miles upstream of the proposed discharge; therefore, the Bosque River will not receive the proposed discharge.

COMMENT 25: There is concern about possible degradation of water quality.

Group #1 feels that the Clean Water Act and the Code of Federal Regulations require a stringent analysis for discharges into a high quality river such as the Brazos. The Texas Commission on Environmental Quality (TCEQ) is not conducting the required water impacts analysis currently and is thus ignoring changes to the river's ability to support aquatic life that will occur as a result of these discharges. Group #2 states that Segment 1242 of the Brazos River – into which Sandy Creek proposes to dump 2.6 million gallons of treated wastewater – has 5 milligrams per liter of dissolved oxygen, is suitable for contact recreation and public water supplies, and supports high aquatic life use. Because these traits make it a high quality stream segment under federal and state law, and because the proposed discharge exceeds 1,000,000 gallons, the Clean Water Act as well as federal and state rules require a stringent analysis for discharges to prevent water quality degradation. To date, the TCEQ has not conducted the required anti-degradation analysis as the law requires, and in the past has conducted this analysis in a manner that fails to comply with federal law. John Hendry is concerned with water degradation. Public Citizen and T.P.O.W.E.R. state that the application is incomplete, in that it does not contain all of the required technical information needed to show that issuance of this permit will not violate the state's general policy, water quality standards, and non-degradation policy set forth in 30 TAC 307.1, 307.4, 307.5, and 307.6.

RESPONSE 25:

In accordance with 30 TAC Section 307.5 and the TCEQ *Procedures to Implement the Texas Surface Water Quality Standards* (January 2003), an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in the Brazos River Above Navasota River, which has been identified as having high aquatic life uses. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. Please see Response 1 for additional information on the administrative and technical review.

COMMENT 26: Group #3, Lewis Pulley, and Randall W. Cervenka state that there is no analysis of how the river and Waco wastewater will be changed by the existence of the plant.

RESPONSE 26:

If the requirements in the draft permit are followed, the water quality of Segment 1242 is not expected to be negatively impacted by the proposed discharge. The draft permit for the proposed facility is designed to ensure that the applicable water quality criteria are protected in the Brazos River. The designated uses and associated criteria in Appendix A of the TSWQS for Segment 1242, Brazos River Above Navasota River, was used to evaluate the permit application. Segment 1242 has the following designated uses: contact recreation, public water supply, a high aquatic life use, and a corresponding 5.0 mg/L dissolved oxygen criterion. Please see Response 1 for additional information about effluent limitations.

COMMENT 27: There is concern about an adverse effect to endangered or threatened species.

Tom Smith states that the permit doesn't fully describe how the wildlife, the Houston toad, and other

things downstream which may be potentially affected by the discharges this plant will be protected. This stretch of the river is a threatened stretch. There are threatened and endangered species and yet there is not a full analysis of how it's going to be protected and how the standards are going to be maintained.. Lewis Pulley feels that some of the aquatic organisms in the river may be threatened of becoming endangered species. There is no listing of such in the application and no analysis of the impact of such. Group #3 are concerned about the coal constituents affecting the aquatic life in the rivers and lakes of the Brazos and Bosque River Basins. They feel the aquatic organisms may be threatened.

RESPONSE 27:

The permit application for this facility was reviewed to determine whether the discharge could potentially have any adverse effect on an aquatic or aquatic-dependent federally endangered or threatened species. The ED staff followed the screening process for aquatic or aquatic-dependent federally endangered and threatened species contained in the *Procedures to Implement the Texas Surface Water Quality Standards*, RG-194 (January 2003).

The Houston Toad (*Bufo houstonensis* Sanders), an endangered aquatic-dependent species of critical concern, occurs within the watershed of Segment 1242 as well as the 12070101 U. S. Geological Survey hydrologic unit code. This determination is based on the U. S. Fish and Wildlife Service's (USFWS) biological opinion on the State of Texas authorization of the Texas Pollutant Discharge Elimination System (TPDES; September 14, 1998; October 21, 1998 update). To make this determination for TPDES permits, the TCEQ and the EPA only consider aquatic or aquatic-dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS biological opinion. The determination is subject to reevaluation due to subsequent updates or amendments to the biological opinion. Species distribution information for the Segment 1242 watershed is provided by the USFWS and documents the toad's presence solely in the vicinity of Sweet Gum Branch in Burleson County. (The proposed facility is in McLennan County.) Sweet Gum Branch is a tributary of Cedar Creek. The distance from the confluence of Cedar Creek and Sweet Gum Branch to Segment 1242 is approximately 4.6 miles. Based upon this information, it is determined that the facility's discharge is not expected to impact the Houston Toad. The proposed discharge is not expected to impact Sweet Gum Branch because Sweet Gum Branch is a tributary of Cedar Creek, which is a tributary of the Brazos River.

The confluence of the Bosque River and Brazos River is located almost 19 miles upstream of the proposed discharge; therefore, the Bosque River will not receive the proposed discharge.

Please see Response 1 for more information on effluent limitations and the protection of water quality.

COMMENT 28: Group #1, Group #2, Ricky Bates, Barbara Bates, Millie Lehrman, Robert L. Cervenka, Jo Cervenka, Eddie L. Thompson, Joe Tepe, George D. Busby, and Barbara J. Busby are all concerned about reductions in their property values.

RESPONSE 28:

The TCEQ's jurisdiction in a wastewater permit application is limited to the issues set out in Chapter 26 of the Texas Water Code. TCEQ does not have jurisdiction to consider property values when reviewing an application for a wastewater permit. However, the permit does not limit the ability of a nearby landowner to seek relief from a court in response to activities that may interfere with a landowner's use and enjoyment of his or her property.

COMMENT 29: Group #1, Group #2, Group #3, Dr. Thomas Frank, Gale Nolan, Randall W. Cervenka, Robert L. Cervenka, Jo Cervenka, Eddie L. Thompson, Joe Tepe, George D. Busby, Barbara J. Busby, Jeffery Thompson, Lorean Pulley, Doris Schraeder, John Schraeder, and Tom Smith are concerned that the discharges will result in odor problems in the surrounding area.

RESPONSE 29:

This is a power plant that will be using treated wastewater from the City of Waco as the source water. However, it is not anticipated that significant odor would be generated from this facility from the use of this source water. However, if this permit is issued and should these conditions and/or other potential violations of the draft permit be observed at the facility, observers are encouraged to report an environmental complaint by calling toll-free, 1-888-777-3186 or calling the TCEQ, Region 9 Waco Office, at (254)751-0335. On a complaint basis, the regional investigators will investigate the conditions at the facility. If the regional investigator documents a violation of TCEQ regulations or conditions included in the TCEQ permit, then appropriate action will be taken.

COMMENT 30: Group #3 and Lewis Pulley state that the plans for this plant include a solid waste disposal facility. They want to know how this facility will be constructed to prevent leachate formation and seepage to groundwater beneath the site.

RESPONSE 30:

The disposal of solid waste is not authorized under this draft permit. However, the draft permit does contain the following provision on pages 10-11:

Facilities which generate industrial solid waste as defined in 30 TAC § 335.1 shall comply with these provisions:

- a. Any solid waste, as defined in 30 TAC § 335.1 (including but not limited to such wastes as garbage, refuse, sludge from a waste treatment, water supply treatment plant or air pollution control facility, discarded materials, discarded materials to be recycled, whether the waste is solid, liquid, or semisolid), generated by the permittee during the management and treatment of wastewater, must be managed in accordance with all applicable provisions of 30 TAC Chapter 335, relating to Industrial Solid Waste Management.
- b. Industrial wastewater that is being collected, accumulated, stored, or processed before discharge through any final discharge outfall, specified by this permit, is considered to be industrial solid waste until the wastewater passes through the actual point source discharge and must be managed in accordance with all applicable provisions of 30 TAC Chapter 335.
- c. The permittee shall provide written notification, pursuant to the requirements of 30 TAC § 335.8(b)(1), to the Corrective Action Section (MC 127) of the Remediation Division informing the Commission of any closure activity involving an Industrial Solid Waste Management Unit, at least 90 days prior to conducting such an activity.
- d. Construction of any industrial solid waste management unit requires the prior written notification of the proposed activity to the Registration and Reporting Section (MC 129) of the Registration, Review, and Reporting Division. No person shall dispose of industrial solid waste, including sludge or other solids from wastewater treatment processes, prior to fulfilling the deed recordation requirements of 30 TAC § 335.5.
- e. The term "industrial solid waste management unit" means a landfill, surface impoundment, waste-pile, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or any other structure vessel, appurtenance, or other improvement on land used to manage industrial solid waste.
- f. The permittee shall keep management records for all sludge (or other waste) removed

from any wastewater treatment process. These records shall fulfill all applicable requirements of 30 TAC Chapter 335 and must include the following, as it pertains to wastewater treatment and discharge:

- i. Volume of waste and date(s) generated from treatment process;
- ii. Volume of waste disposed of on-site or shipped off-site;
- iii. Date(s) of disposal;
- iv. Identity of hauler or transporter;
- v. Location of disposal site; and
- vi. Method of final disposal.

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

Therefore, the permittee will have to meet these provisions for disposal of solid waste. Also, the draft permit contains TCEQ liner requirements for the all wastewater ponds, including the coal pile runoff pond. Please refer to Response 14 for further explanation on the liner requirement.

COMMENT 31: There is concern over possible contamination to groundwater.

Group #3, Fay Setzer and Roy Setzer are concerned about how leakage to the groundwater will be prevented from the two ponds on the site. Group #3 requests that TCEQ give specific plans of the important groundwater protection needs. Ricky Bates and Barbara Bates state that the entire area will be in danger, due to the likelihood of groundwater contamination. With the fact that they will have a large amount of chemicals and already contaminated water on site, the likelihood that some will soak into the ground and contaminate our water supply is assured. Lorean Pulley is concerned about toxic pollutants seeping into the drinking water. Jo Cervenka is concerned about contamination of groundwater, the streams which feed into the Brazos River, and the river itself. Joyce Shannon is concerned about groundwater contamination. Nojah Fadal is concerned about contaminants leaking into the groundwater.

RESPONSE 31:

The draft permit includes requirements for lining all wastewater ponds at this facility, found at the Other Requirements No. 10. If the ponds are constructed, maintained, and operated according to the requirements of the draft permit, it is not anticipated that wastewater would migrate downward through the liner. Please Refer to Response 14 for more explanation on the liner requirements.

COMMENT 32: There is concern that there could be an adverse effect from runoff.

Group #3 and Lewis Pulley state that there will be large coal piles on the site, with water spray to suppress dust and with rain falling on those piles. They ask how this plant will be constructed to contain this water and keep it from entering the groundwater. Groundwater on the plant site discharges to the surface, leading to the river. Lewis Pulley states that there will be large coal piles on the site, with water spray to suppress dust and with rain falling on those piles. He wants to know how this plant will be constructed to contain this water and keep it from entering the groundwater. Lorean Pulley and Lewis Pulley state that there will be a coal pile on site with water spray used to suppress dust and with rains falling on it. They ask how this water will be kept so it will not go into the streams that will get into their ponds. There is nothing in the application to address the specifics.

RESPONSE 32:

Storm water runoff from the coal piles will be captured and diverted to the coal pile runoff pond. The draft permit includes requirements for lining all wastewater ponds at this facility, found at the Other

Requirements No. 10. If the ponds are constructed, maintained, and operated according to the requirements of the draft permit, it is not anticipated that wastewater would migrate downward through the liner. Please Refer to Response 14 for further explanation on the liner requirements.

The permittee also indicated in the permit application that they will get a MSGP. This MSGP provides authorization for point source discharges of storm water associated with industrial activity to water in the state. The General Permit contains effluent limitations and requirements applicable to all industrial activities that are eligible for coverage under this MSGP. The General Permit requires the permittee to implement Best Management Practices (BMPs), including schedules of activities, prohibitions of practices, maintenance procedures, and other techniques to control, prevent or reduce the discharge of pollutants to water in the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spills or leaks, sludge or waste disposal, or drainage from raw material storage area.

COMMENT 33: Jo Cervenka is concerned that the builders of the plant will sell the plant once it is built and that their promises won't be kept.

RESPONSE 33:

30 TAC Section 305.64 requires the applicant to submit an application at least 30 days prior to the ownership change to transfer the permit to the new owner if the wastewater treatment facility is sold. The application requires information from both the current owner and new owner of the facility. The ED reviews the application and transfers it if the application is administratively complete. The ED may refuse to approve a transfer if the conditions of a judicial decree, compliance agreement or enforcement order have not been entirely met. The ED shall also consider the prior compliance record of the transferee, if any. A new owner is required to comply with all permit provisions or will be subject to enforcement.

COMMENT 34: Jo Cervenka is concerned the workers who will build the plant will put a strain on the area's water supply.

RESPONSE 34:

The permitting process is limited to controlling the discharge of pollutants into water in the state and protecting the water quality of the state's rivers, lakes and coastal waters. The TCEQ has no jurisdiction to address the strain the workers from a facility may put on an area's water supply.

COMMENT 35: John Schraeder, Doris Schraeder, Robert L. Cervenka and Jo Cervenka are concerned about noise.

RESPONSE 35:

The TCEQ's jurisdiction in a permit application is limited to the issues set out by statute. The TCEQ may not consider noise from a facility in determining whether to approve or deny a permit. However, 30 TAC Section 101.4 prohibits a person from creating or maintaining a condition of nuisance that interferes with a landowner's use and enjoyment of their property. The scope of the Agency's regulatory jurisdiction does not affect or limit the ability of a landowner to use common law remedies for trespass, nuisance, or other causes of action in response to activities that result in damage to private property or that interfere with the private use and enjoyment of property.

COMMENT 36: There is concern over wetland protection.

Joyce Shannon is concerned about preservation of the wetlands in the area. Tom Smith states that this permit does not address what is happening with the wetlands. Public Citizen and T.P.O.W.E.R. feel that Sandy Creek may need to apply for and obtain an EPA and Army Corp of Engineers' §404 dredge and fill permit to authorize the discharge of materials into wetlands, streams and creeks on the 700-acre site

proposed for this new coal-fired, steam electric station.

RESPONSE 36:

The U. S. Army Corps of Engineers (USACE) regulates certain activities occurring in waters of the U. S., including wetlands, under Section 404 of the Clean Water Act and Section 10 of the River and Harbors Act of 1899. A USACE permit is required for the discharge of dredged or fill material into waters of the US, including wetlands. As part of their permit process, the USACE evaluates potential environmental impacts to wetlands proposed to be filled. The proposed facility is located within the USACE Fort Worth District. The ED recommends contacting the USACE Fort Worth District for additional information on the USACE permitting process. Information regarding the USACE permitting process can be requested from:

United States Army Corps of Engineers
Regulatory Branch (CESWF-PER-R)
Fort Worth District
P.O. Box 17300
Fort Worth, Texas 76102-0300
Telephone number: (817) 886-1731

COMMENT 37: Joyce Shannon states that she has some small ponds on the place she lives and she is worried about the disposal and how it will be handled.

RESPONSE 37:

The draft permit authorizes the discharge of wastewater to the Brazos River. The draft permit also includes a provision that requires all wastewater ponds be lined to prevent migration of wastewater to the groundwater. The permittee is also required to obtain authorization for the discharge of storm water.

The ED evaluated the applicant's request and developed effluent limitations consistent with the TSWQS which provide for the protection and propagation of fish and plant life, recreation in and on the water, and public water supply, and based on technology for the type of wastewater generated. Please see Response 1 for further explanation on the effluent limits.

COMMENT 38: Joyce Shannon states that there needs to be more studying done and proof of protection for our water supply.

RESPONSE 38:

According to the permit application submitted by the permittee, there is no public water supply located within five miles downstream from the proposed point of discharge. However, the draft permit was drafted in accordance with 30 TAC Section 307, and "Procedures to Implement the Texas Surface Water Quality Standards," January 2003 (Implementation Procedures). The discharge will be evaluated and required to meet human health criteria for water and fish consumption in the TSWQS. Please see Response 1 for additional information.

COMMENT 39: Kay Uptmore is concerned about the future of the Brazos River.

RESPONSE 39:

The Texas Surface Water Quality Standards, 30 TAC Section 307.4(d), states that "surface waters will not be toxic to man from ingestion of water, consumption of aquatic organisms, or contact with the skin, or to terrestrial or aquatic life." The methodology outlined in the "Implementation of the Texas Commission on Environmental Quality Standards via Permitting" is designed to insure compliance with

30 TAC Chapter 307. Specifically, the methodology is designed to include that no source will be allowed to discharge any wastewater which: (1) results in instream aquatic toxicity; (2) causes a violation of an applicable narrative or numerical state water quality standard; (3) results in the endangerment of a drinking water supply; or (4) results in aquatic bioaccumulation which threatens human health.

The draft permit contains technology-based (40 CFR 423- Steam Electric Power Generating Point Source Category) effluent limits reflecting the NSPS. Where these technology-based permit limits do not protect water quality or the designated uses, additional water quality-based effluent limitations and/or conditions are included. State narrative and numerical water quality standards are used in conjunction with EPA criteria and other toxicity data bases to determine the adequacy of technology-based permit limits and the need for additional water quality-based controls.

Upon initial discharge, the permittee is required to submit additional effluent data. Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations or monitoring requirements if necessary.

COMMENT 40: There is concern over faults in the area.

Lorean Pulley is concerned about faults in the area. Ricky Bates, Barbara Bates, Dr. Thomas Frank, and Gale Nolan have been informed on several occasions that there is a series of faults in this area that make it all but impossible to prevent foundations from cracking and moving. Robert L. Cervenka and Jo Cervenka state that there are faults in the area that cause geothermal heating of our wells and they are only a few hundred feet from the lake and river bottom. There has been no core drilling to check what the foundation for this plant would be for building. This land is shifting black land with clay that shrinks and expands with moisture and is very difficult to build on. About 50 years ago, The Jewett Steel Mill had an option on land across the Rattlesnake Road to build their plant, but after core drilling, they said it could not be built on the site because of shifting soil. Back when Lake Creek Power Plant was built, the soil shifted 8 inches in different areas of the plant site between the timeline the plant was surveyed and the start of construction.

RESPONSE 40:

The permitting process is limited to controlling the discharge of pollutants into water in the state and to protecting the water quality of the state's rivers, lakes, and coastal waters. The TCEQ's jurisdiction in a wastewater permit application is established by Chapter 26 of the Texas Water Code which does not provide authorization for TCEQ to consider issues such as the feasibility of the proposed development. These concerns may be addressed with the developer.

COMMENT 41: Lorean Pulley is concerned about cattle ponds becoming contaminated.

RESPONSE 41:

The draft permit proposes to authorize the discharge directly to the Brazos River. The draft permit does not authorize a discharge to tributaries or cattle ponds. Please see Response 1 for a description of how the effluent will be screened if the permit is issued, what criteria will be applied to the discharge, and what effluent limitations are proposed in the draft permit. Please see Response 18 for additional information.

COMMENT 42: Lorean Pulley suggests that TCEQ change their laws now.

RESPONSE 42:

The permitting process is not the appropriate mechanism to seek amendment of TCEQ regulations. Anyone may petition the Commission for a rule change.

COMMENT 43: There is concern about a possible adverse effect to downstream areas.

Philip Ballmann feels this discharge of wastewater into the Brazos River will affect the river and communities all the way to the gulf coast. Robert L. Cervenka and Jo Cervenka want to know what the dumping will do to users all the way to the gulf coast, for fishing and the shrimp industry.

RESPONSE 43:

The ED evaluates the effect of wastewater discharges up to and including the first classified segment because these are the areas most likely to be affected by the discharge. In this case, the discharge is directly to the Brazos River Above Navasota River, Segment 1242. The TSWQS list the segment boundaries for the Brazos River Above Navasota River from a point immediately upstream of the confluence of the Navasota River in Brazos/Grijmes/Washington County to the low water dam forming Lake Brazos in McLennan County. The TCEQ does not anticipate that the proposed discharge will have an adverse effect on Segment 1242 and therefore expects downstream segments to be protected as well.

COMMENT 44: Philip Ballmann states that his cattle will be affected by the excess sulfur that will be discharged by the plant.

COMMENT 44:

Please see Responses 1 and 18 for a discussion of the water quality criteria that were and will be applied to the proposed discharge and the effluent limitations proposed in the draft permit. Human health criteria for the consumption of water and fish tissue will be applied to the discharge if the permit is issued.

COMMENT 45: Philip Ballmann wants to know what type of landscaping will be done at the plant.

RESPONSE 45:

The permitting process is limited to controlling the discharge of pollutants into water in the state and to protecting the water quality of the state's rivers, lakes, and coastal waters. If this comment is in regard to concerns about runoff prevention, Attachment 4 in the application specifies that storm water runoff from the coal piles will be captured and diverted to the settling pond to remove suspended solids prior to discharge. All other storm water discharges from the SCES will be covered under the MSGP.

COMMENT 46: There is concern that not enough information has been provided by Sandy Creek.

Public Citizen and T.P.O.W.E.R. state that Sandy Creek has failed to provide even the most basic information relating to the quality of the industrial wastewaters that it expects to generate, specifically, the identity and concentrations of the hazardous chemical constituents that will be present in its wastes. Public Citizen and T.P.O.W.E.R. acknowledge that this facility has not yet been constructed and, therefore, plant-specific information on constituent concentrations is not possible, but want to know why information from other steam electric stations burning Wyoming coal was not used to provide some sort of estimate on the quality of these waste streams. Public Citizen and T.P.O.W.E.R. state that Sandy Creek represents that it will be using primarily Wyoming coal to produce electricity at this plant. The Applicant fails to identify the heavy metal constituents or detail the concentrations that can be expected to be present in its incoming coal. Public Citizen and T.P.O.W.E.R. feel that Sandy Creek fails to provide the technical information needed to allow the staff to fully and completely evaluate the impact that the discharge of these wastestreams will have on the Brazos River, adjoining wetland areas and on the wildlife and aquatic species that habitat this and downstream segments.

RESPONSE 46:

Please see Response 1 for additional information on how the proposed discharge was evaluated and the

proposed effluent limitations.

COMMENT 47: Public Citizen and T.P.O.W.E.R. state that due to the size of this proposed discharge, and since this stream segment is listed on the State's inventory of impaired and threatened waters for elevated levels of bacteria, additional modeling of the impact that the discharge may have on the stream segment should be performed for bacteria as well as heavy metals, TSS, and oil and grease.

RESPONSE 47:

The proposed facility plans to use treated domestic wastewater from the City of Waco. The wastewater permit for the City of Waco requires the facility to disinfect the effluent to remove harmful bacteria and most other disease causing organisms. The proposed facility will not be contributing additional domestic wastewater to the discharge. Therefore, the ED did not include a chlorination requirement in the draft permit.

Please see Response 1 for the proposed effluent limitations in the draft permit.

COMMENT 48: There is concern about radioactive materials.

Public Citizen and T.P.O.W.E.R. feel that the Applicant fails to address whether it has determined whether naturally occurring radioactive material (NORM) may be a problem in the coal used by the facility. Tom Smith is concerned about radioactive materials.

RESPONSE 48:

The TCEQ's wastewater permit application asks if radioactive materials are mined, used, stored, or processed at the facility. 30 TAC Chapter 336 defines radioactive material as "a naturally-occurring or artificially-produced solid, liquid, or gas that emits radiation spontaneously." The applicant responded with a no to this question.

The applicant describes their of bottom ash system as follows:

The bottom ash system removes ash from the bottom of the boiler. The bottom ash system consists of a water-filled trough that collects ash that falls out of suspension in the boiler. Ash is removed from the water-filled trough by a submerged chain conveyor. Pyrites removed from the coal pulverizers may be sluiced, using cooling tower blowdown, to the bottom ash system for disposal with the bottom ash. Cooling tower blowdown will be continuously fed through the bottom ash system to maintain proper temperature. Water coming out of the bottom ash system will be routed to Outfall 001 via low stream component 201.

The permittee will be required to dispose of the bottom ash in compliance with the industrial solid waste rules found in Title 30 of the Texas Administrative Code, Chapter 335. Bottom ash is exempt from radioactive material licensing requirements under the rules promulgated by the Department of State Health Services, found at 25 TAC Section 289.259(d)(5)(B). For these reasons, TCEQ has not typically required coal-fired steam electric stations to monitor their effluent for NORMs.

COMMENT 49: Public Citizen and T.P.O.W.E.R. state that as part of the wastewater discharge permitting process, Sandy Creek must not only demonstrate that it will meet federal and state wastewater discharge standards and criteria adopted by the U.S. Environmental Protection Agency (EPA), and the TCEQ, it must also demonstrate that it can comply with the EPA's new source performance standards under 40 CFR Part 423.

RESPONSE 49:

EPA has defined "new source" as any facility that commenced construction following the publication of the proposed performance standards. These standards, identified as new source performance standards (NSPS), are described as the best available demonstrated control technology, processes, operating methods, or other alternatives. NSPSs are effective on the date of the commencement of a new facility's operation.

The discharge of cooling tower blowdown via Outfall 001, chemical metal cleaning waste from internal Outfall 101, low volume wastewater and coal pile runoff from internal Outfall 201 are subject to federal effluent limitations guidelines at 40 CFR Part 423 (Steam Electric Power Generating Point Source Category). A new source determination was performed and all the above listed discharges are a new source as defined at 40 CFR § 122.2. Therefore, NSPS are required for this discharge, and NSPS limits have been placed in the draft permit.

Please see Response 1 for additional information.

COMMENT 50: There is concern about buffer zones.

Public Citizen and T.P.O.W.E.R. state that the application doesn't address whether or not buffer zones are being provided for the plant site and its waste management units or the discharge point into the Brazos River. **Public Citizen** believes TCEQ needs to establish appropriate buffer zone requirements to ensure that the public is not exposed to constituents that may be contained in the facility's wastewater and solid waste streams.

RESPONSE 50:

TCEQ rules establish buffer zones for domestic wastewater facilities in Title 30 TAC Section 309.13. However, there are no specific rules establishing buffer zones for industrial wastewater facilities. For domestic wastewater facilities, the buffer zones are established to address odor and noise abatement issues. The wastewater that SCESS will be using has already been treated by WMARSS; therefore, odor is not expected to be an issue.

COMMENT 51: **Public Citizen and T.P.O.W.E.R.** want to know whether a registered or certified professional engineer or consulting firm prepared and / or reviewed the permit application any time prior or subsequent to its submission to TCEQ.

RESPONSE 51:

The application was completed by Kathy French, P.E. (Not licensed in Texas), Project Engineer, and Juliana Hash, Engineer. It was reviewed by Claire P. Arenson, Saitas and Arenson Consulting Firm.

COMMENT 52: **Public Citizen and T.P.O.W.E.R.** state that Sandy Creek provides in its application that it will not construct a pad, curbing or other containment devices to protect its coal pile and bottom ash storage piles from runoff. **Public Citizen** does not believe that this comports with best management practices under federal storm water discharge permit requirements. Sandy Creek needs to supplement the application to provide that the facility will manage all of its discharges, including its storm water discharges, under this TPDES permit and amend its application to address storm water management, monitoring and discharging practices, or provide additional information on the facility's design and construction parameters to show that best management practices can be satisfied under the federal stormwater discharge program and that the storm water will not be contaminated.

RESPONSE 52:

Attachment 4 in the application specifies that storm water runoff from the coal piles will be captured and diverted to the settling pond to remove suspended solids prior to discharge. All other storm water discharges from the SCES will be covered under the MSGP.

COMMENT 53: There is concern about a possible change in the source of coal used by the proposed facility.

Public Citizen and T.P.O.W.E.R. want to know what other sources of coal may be used to produce power at the plant, and whether Sandy Creek intends to use Texas-based lignite as a potential fuel source. Public Citizen and T.P.O.W.E.R. believe that some form of periodic sampling for the presence of heavy metals, volatile and semi-volatile constituents, and radioactive material should be required at the start-up of the plant, particularly if the source of the coal supply changes. Tom Smith wants to know what happens when the plant uses lignite, rather than Wyoming coal.

RESPONSE 53:

The permit application indicated that the primary source of coal will come from the Powder River basin. As a result of this comment, a provision has been added to the permit that will require the effluent to be re-sampled if coal from areas outside the Powder River basin is used.

Please see Response 1 for additional information.

COMMENT 54: Public Citizen and T.P.O.W.E.R. request that if both the wastewater discharge and air quality permit applications are referred to SOAH for contested case hearings, Public Citizen and TPOWER recommend that the matters be consolidated to conserve time and expense for all parties.

RESPONSE 54:

The air quality permit application for this facility was referred to the State Office of Administrative Hearings (SOAH) for a contested case hearing last year and a Proposal for Decision has been issued. Therefore, it will not be possible to consolidate the two cases if this wastewater permit application is referred to SOAH for a contested case hearing as well.

COMMENT 55: Public Citizen and T.P.O.W.E.R. state that TCEQ's regulations in 30 TAC § 60.1©) provide that information relating to other sites owned or operated by the permit applicant should be included with the technical summary and the draft permit issued by the TCEQ in response to a new permit application for a wastewater discharge permit. No statement on the company or its officers' compliance history for the past five years has been included with the technical summary and draft permit issued by the TCEQ.

RESPONSE 55:

During the technical review, a compliance history review is conducted on the company and the site based on the criteria in Title 30, Chapter 60 of the TAC. The compliance history is reviewed for the company and site for the five-year period prior to the date the permit application was received by TCEQ. The compliance history includes multimedia compliance-related components about site under review. These components include the following: enforcement orders, consent decrees, court judgement, criminal convictions, chronic excessive emissions events, investigations, notice of violations, audits and violations disclosed under the Audit Act, environmental management systems, voluntary on-site compliance assessments, voluntary pollution reduction programs and early compliance.

This permit application was received on September 1, 2002, and the company and site have been rated and classified pursuant to Title 30, Chapter 60 of the TAC. A company and site may have one of the following classifications and ratings:

High: rating ≤ 0.10 (above-average compliance record)

Average by Default: rating = 3.01 (these are for sites which have never been investigated)

Average: 0.10 < rating < 45 (generally complies with environmental regulations)
Poor: 45 < rating (performs below average)

New facilities are rated as average by default.

The compliance history is always available to the public. The compliance history may be viewed on the TCEQ website at www.tceq.state.tx.us/enforcement/comp_histories.html.

COMMENT 56: Public Citizen and T.P.O.W.E.R. state that no information has been provided to show that Sandy Creek has any experience constructing or operating steam electric generating plants, and no financial information has been provided to document that Sandy Creek has the financial wherewithal to operate the facility in compliance with federal and state regulations, standards, guidelines, and policies.

RESPONSE 56:

Chapter 26 of the Texas Water Code provides TCEQ with authorization to consider issues that directly affect water quality, but it does not provide authorization for TCEQ to consider issues such as the financing, design experience or experience operating a coal fired electric plant. Sandy Creek must comply with all relevant TCEQ laws and rules, and if it does not comply, it will be subject to enforcement action.

Also, TCEQ does not require the permittee to post a bond to ensure that adequate funds are available to construct and operate the wastewater treatment facility. However, 30 TAC Section 291.142 authorizes TCEQ to appoint a person to temporarily operate or manage a facility that has discontinued or abandoned operations.

COMMENT 57: Public Citizen and T.P.O.W.E.R. believe a full Appendix VIII/IX sampling protocol should be performed on each of the four designated wastestreams once the plant starts generating them within a certain time (e.g., 30 days) along with the required biomonitoring to ensure that these streams will not pose a threat to human health, safety or the environment. Periodic sampling should then be required of any constituent that is detected during this initial round of sampling as a requirement in the draft permit.

RESPONSE 57:

Please Response 1 for information about the required effluent analysis.

As a result of this comment, additional sampling requirements have been added to the draft permit. The draft permit now requires that the permittee sample for Volatile Compounds and Acid Compounds found in Table 7 of the wastewater permit application.

COMMENT 58: Public Citizen and T.P.O.W.E.R. want to know why an inconsistency on whether the facility is a major or minor facility exists in the file and want to further examine which characterization properly applies to the facility.

RESPONSE 58:

EPA initially designates new permits as MINORS until EPA receives a Major/Minor Rating Worksheet from TCEQ to upgrade the facility to a MAJOR. TCEQ sends Major/Minor changes to EPA once a year in September to upgrade the facility designation. A Major/Minor Rating Worksheet was completed for this facility because it was determined that the designation needs to be changed from a Minor to a Major. Major industrial facilities are determined based on specific rating criteria developed by EPA and the State. The facility's rating does not affect the effluent limitations or monitoring requirements in the permit.

COMMENT 59: Public Citizen and T.P.O.W.E.R. state that the draft permit does not require sampling for chromium, mercury, copper, iron or zinc at each of the company's designated internal outfalls. Without

more information on the quantity of the raw coal and the wastes that will be generated once the plant is operational, it is not appropriate to remove heavy metal monitoring parameters from the draft permit.

RESPONSE 59:

Technology-based effluent limitations for total copper and total iron have been established for chemical metal cleaning waste at internal Outfall 101. However, effluent limitations for total chromium and total zinc were removed from Outfall 001 since the permittee will not use any cooling tower maintenance chemicals that contain these substances. 40 CFR 423.15 (j)(1) only imposes effluent limitations for these substances if they are present in cooling tower maintenance chemicals. Upon initial discharge, the permittee is required to submit additional effluent data. Based on a technical review of the submitted analytical results, an amendment may be initiated by TCEQ staff to include additional effluent limitations or monitoring requirements if necessary.

COMMENT 60: Public Citizen and T.P.O.W.E.R. state that no information is provided on the officers, directors or employees of Sandy Creek Energy Associates, L.P. or LS Power, nor is there any information on whether these individuals have been active in the State of Texas through other corporate affiliations. Staff should request information as to the nature of the relationship of the named individuals who appear to be affiliated with both LS Power and Sandy Creek.

RESPONSE 60:

Prior to the application being declared administratively complete, the applicant must show they are a legal entity doing business in the State of Texas. The applicant made this demonstration, so the application was declared administratively complete. Therefore, the applicant has met these administrative requirements to apply for a wastewater discharge permit.

COMMENT 61: Public Citizen and T.P.O.W.E.R. state that Sandy Creek has failed to address the chemical constituents that are expected to be present in its bottom ash although it requests that runoff from its bottom ash disposal area be treated as uncontaminated storm water runoff subject to regulation under a general storm water permit. This is inappropriate unless Sandy Creek intends to use daily cover on its bottom ash disposal area to prevent runoff from contacting the bottom ash and/or leachate from the area.

RESPONSE 61:

The wastewater permit application makes the following statement about the proposed Bottom Ash System:

The bottom ash system removes ash from the bottom of the boiler. The bottom ash system consists of a water-filled trough that collects ash that falls out of suspension in the boiler. Ash is removed from the water-filled trough by a submerged chain conveyor. Pyrites removed from the coal pulverizers may be sluiced, using cooling tower blowdown, to the bottom ash system for disposal with the bottom ash. Cooling tower blowdown will be continuously fed through the bottom ash system to maintain proper temperature. Water coming out of the bottom ash system will be routed to Outfall 001 via low stream component 201.

The applicant has requested that the bottom ash water be included with the low volume wastewater stream authorized for discharged via internal Outfall 101 and ultimately final Outfall 001. Please see Response 1 for more information on effluent limitations at these outfalls and for a description of the effluent sampling that is required if the permit is issued.

COMMENT 62: Ralph Cooper believes that the fragmented process that is being used misses many, many water quality impacts.

RESPONSE 62:

The standard permitting procedures used for all wastewater permit applications was followed with this application. Please see Response 1 in this document for a discussion of what water quality criteria apply, what effluent limitations are being proposed, and how the permit requires additional effluent sampling if the permit is issued.

COMMENT 63: Randall W. Cervenka wants to know what other permits will be required prior to construction of this plant, and what is their status?

RESPONSE 63:

Sandy Creek Energy Associates, L.P. currently has pending applications for a new source air permit and a Texas Pollutant Discharge Elimination System permit. Other permits that may be required at the facility are a Multi-Sector Storm Water General Permit, a Construction Storm Water General Permit, an authorization for the disposal of domestic wastes, and any permits that may be required for solid waste disposal activities.

COMMENT 64: Sarah Heger is concerned about pollution to the Bosque River.

RESPONSE 64:

The confluence of the Bosque River and Brazos River is located almost 19 miles upstream of the proposed discharge; therefore, the Bosque River will not receive the proposed discharge.

COMMENT 65: Randall W. Cervenka wants to know how these sites will be constructed to contain this runoff and prevent seepage to our precious groundwater, rivers and/or surrounding bodies of water.

RESPONSE 65:

The draft permit includes requirements for lining all wastewater ponds at this facility, found at Other Requirements No. 10. If the ponds are constructed, maintained, and operated according to the requirements of the draft permit, wastewater should not migrate downward through the liner and should pose no risk to area groundwater resources.

COMMENT 66: Randall W. Cervenka is concerned about an adverse affect to his recreation at Marble Falls near Marlin, down river from the proposed plant.

RESPONSE 66:

The purpose of the TSWQS is to maintain the quality of water in the state and to protect human health along the discharge route. Marble Falls near Marlin lies within the boundaries of Segment 1242, the Brazos River Above Navasota River, which is the same classified segment that is proposed to receive the discharge. The designated uses and associated criteria in Appendix A of the TSWQS for Segment 1242 were used to evaluate the permit application. Segment 1242 has a designated contact recreation use. The draft permit has been designed to protect human health resulting from contact recreation.

COMMENT 67: Tom Smith wants to know what analysis has been done for the liners. He states that there are three options in the draft permit, but no decision and no analysis. If the liner fails, the pollutant goes right into the gravel beds and then right into the river. That's a fundamental flaw with this permit and something needs to be done about it.

RESPONSE 67:

The Other Requirements in the draft permit provides the permittee with three liners options which have been approved by TCEQ. If the ponds are constructed, maintained, and operated according to the requirements of the draft permit, wastewater is not expected to migrate downward through the liner to groundwater resources. If the liner fails, the permittee is responsible for taking action to comply with all permit requirements. Please refer to Response 14 for additional information.

COMMENT 68: Randall W. Cervenka states that there is no analysis of rainfall or water spray used to suppress dust of the coal pile and on the solid waste disposal facility on site. Deposition of coal constituents may affect aquatic life in surrounding bodies of water and rivers. He wants to know how these sites will be constructed to contain runoff and what effects this plant will have on his water supply concerning runoff discharges containing mercury, lead and other constituents.

RESPONSE 68:

Storm water runoff from the coal piles will be captured and diverted to the coal pile runoff ponds. The draft permit includes requirements for lining all wastewater ponds at this facility, found at the Other Requirements No. 10. If the ponds are constructed, maintained, and operated according to the requirements of the draft permit, wastewater is not expected migrate downward through the liner to groundwater resources. Please Refer to Response 14 for further explanation on the liner requirements.

The permittee also indicated in the permit application that they will get a MSGP. This MSGP provides authorization for point source discharges of storm water associated with industrial activity to water in the state. The permit contains effluent limitations and requirements applicable to all industrial activities that are eligible for coverage under this MSGP.

COMMENTS 69: There is concern over a loss of profit from agricultural activities caused by the proposed facility.

Ricky Bates and Barbara Bates state that we all know that pipes leak, valves fail and spills happen. When they do, where will the contaminated water go? What doesn't soak into the ground will be washed onto my property, causing the land and stock ponds to become contaminated and ultimately affect my ability to profit from my land and livestock. Ricky Bates and Barbara Bates are concerned that their ability to profit from the livestock that they raise will be adversely affected.

RESPONSE 69:

This permit addresses wastewater and wastewater discharges. TCEQ cannot take into consideration a fear of loss of income when reviewing an application for a wastewater permit. For additional information, please see Responses 1, 15, and 18 for information addressing this comment.

COMMENT 70: Ricky Bates asks if there are any measures in place to monitor the water supplies other than that which will be done by L.S. Power. If there are, why are they not in the permit?

RESPONSE 70:

TCEQ may inspect Sandy Creek Energy Associates and its discharges on its own volition or based on a citizen complaint. The public may report unauthorized discharges of wastewater in McLennan County by calling the TCEQ Region 10 office in Waco at (254)751-0335, or the statewide toll-free number at 1-888-777-3186.

COMMENT 71: Ricky Bates states that if we look at history, if all our standards were in place and the EPA was doing their job and TCEQ was doing their job so well, why are so many of our lakes and streams in Texas either totally shut off from public use or shut down on a limited basis to where we can't eat the fish or use the water.

RESPONSE 71:

The Texas Commission on Environmental Quality strives to protect our state's human and natural resources consistent with sustainable economic development. Our goal is clean air, clean water, and the safe management of waste. The TCEQ has programs for permitting, enforcement, nonpoint source pollution, and water quality monitoring to accomplish the goal of clean water. The TCEQ is active in all these programs to address all existing water quality issues and prevent future water quality problems. Increased monitoring efforts and more stringent water quality standards have resulted in new and additional listings of water quality problem areas. The TCEQ is expending substantial resources to address these newly identified problem areas.

COMMENT 72: Robert L. Cervenka and Jo Cervenka are concerned that L.S. Power will bury toxic waste on their land.

RESPONSE 72:

Please see Response 14 for a discussion of the requirements of solid waste disposal listed in the permit.

COMMENT 73: Robert L. Cervenka and Jo Cervenka state that this power plant is proposed to be built on the Brazos Terraces, a gravel and sand formation along the river that causes water to leak out of the present Lake Creek Reservoir. All of the runoff now flows into the reservoir. How will the coal plant water runoff be kept out of the Lake Creek Reservoir? They cannot see L.S. Power containing runoff from the coal piles on the site.

RESPONSE 73:

The permit application makes the following statement about coal pile runoff:

Storm water runoff from the coal piles will be routed to a storm water pond. Coal pile runoff will meet NSPS for total suspended solids prior to discharge to Outfall 001 via coal pile runoff stream component 201.

The applicant has requested that coal pile runoff be included in the authorized wastestreams that will be discharge via internal Outfall 201 and ultimately external Outfall 001 to the Brazos River. Please see Response 1 for a list of proposed effluent limitations for Outfalls 201 and 001 and further discussion about the proposed wastewater permit requirements.

COMMENT 74: Robert L. Cervenka and Jo Cervenka are concerned about fly ash and constant lights.

RESPONSE 74:

TCEQ does not have the authority to regulate the siting of a facility except to the extent that it may impact water quality. Additionally, wastewater permits issued by TCEQ do not allow permit holders to maintain a condition of nuisance in their disposal areas that could interfere with a landowner's use and enjoyment of his or her property. The permits do not limit the ability of a landowner to use common law remedies for trespass, nuisance, or other causes of action in response to activities that result in damage to private property or that interfere with the private use and enjoyment of property.

COMMENT 75: Robert L. Cervenka and Jo Cervenka are concerned what the condensed concentrated sewer water will do to their river.

RESPONSE 75:

Please see Response 1 for a discussion of the proposed permit requirements and limitations and how the

effluent will be evaluated as discharge commences. The draft permit requires that the discharge be protective of all water quality criteria.

COMMENT 76: Sarah Heger is concerned about the pollution of groundwater, the water supply, and the Bosque River.

RESPONSE 76:

The confluence of the Bosque River and Brazos River is located almost 19 miles upstream of the proposed discharge; therefore, the Bosque River will not receive the proposed discharge.

The draft permit includes lining requirements at this facility, found at the Other Requirements. Please refer to Response 14 of this document for the lining requirements. If the ponds are constructed, maintained, and operated according to the requirements of the draft permit, wastewater should not migrate downward through the liner and should pose no risk to area groundwater resources.

COMMENT 77: Terry Henderson states that the TCEQ should not consider granting this water permit without scientific data showing the impact of emissions to the rivers and lakes in the area, and the impact on the water table in this area.

RESPONSE 77:

Please see Responses 1, 2, 3, 4, 14, 15, 21, 22, 31 and others that describe how the wastewater will be handled by the facility, what water quality criteria the effluent will have to meet, and what effluent limitations and other requirements are being proposed to address this concern if the permit is issued.

COMMENT 78: Todd Nafe is concerned that this plant would adversely affect his income as an outdoors writer.

RESPONSE 78:

This permit addresses wastewater and wastewater discharges. TCEQ cannot take into consideration a fear of loss of income when reviewing an application for a wastewater permit.

COMMENT 79: Tom Smith asks where the mercury that comes off the coal and out of the coal ash goes.

RESPONSE 79:

Storm water runoff from coal piles (coal pile runoff) will be routed to a storm water runoff pond. Coal pile runoff will be treated to meet NSPS prior to discharge from internal Outfall 201 and ultimately final outfall 001. The NSPS do not contain mercury as an effluent limitation. However, the draft permit will require that the initial discharges be tested for a series of pollutants (including mercury) to be screened against the TSWQS. The permit may then be amended to include additional monitoring, limits, and/or other controls should the results of the testing indicate any levels of concern. If the permit is issued, the discharge will be required to meet all applicable water quality criteria. Please see Response 1 for more information.

COMMENT 80: Tom Smith states that the permit does not deal with the long term toxic effects of the concentrated emissions that are going to be coming from the effluent as permitted and described in this particular plan.

RESPONSE 80:

As described in Response 1, the permit has been drafted and will be required to meet all applicable state water quality criteria and federal technology-based requirements. The draft permit also requires monthly monitoring and reporting requirements.

Because this is a proposed facility that has not been constructed, no effluent data were submitted with the application. Therefore, the proposed permit requires that the initial discharges be sampled and analyzed for a series of pollutants to be screened against the concentrations necessary to protect the water quality criteria. If the permit is issued, the effluent data will be compared against the permit limits derived in Appendix B of the Statement of Basis/Technical Summary. If the effluent data show pollutants that have the potential to exceed the water quality criteria, the permit will be re-opened and additional monitoring, effluent limits, and/or other controls may be added to the permit. The TCEQ developed effluent limitations for temperature, a known pollutant for this type of discharge, consistent with TSWQS. Biomonitoring requirements are proposed for this facility in the draft permit. The TCEQ believes the draft permit is protective of the water quality in the Brazos River.

COMMENT 81: Tom Smith states that the permit fails to talk about the base load flow in adequate ways to protect the environment.

RESPONSE 81:

Response 1 discusses how the effluent will be evaluated to ensure the proposed discharge is protective of the environment. The 7Q2 of the Brazos River is established at 87 cfs. Therefore, at the full permitted flow the proposed discharge would constitute approximately 4.4% of the combined flow. The effluent limitations in the draft permit are concentration-based because it is expected that the proposed discharge would not reach the full permitted flows early in the permit life.

However, the effluent limits were calculated using the full permitted flow, and the effluent analysis will be screened against the effluent limits based on this higher effluent flow, which is more protective. The permit may then be amended to include additional monitoring, limits, and/or other controls should the results of the testing indicate any levels of concern.

COMMENT 82: Tom Smith states that the permit fails to answer key questions about monitoring and controlling pollutants and how keeping them on-site or treating them.

RESPONSE 82:

Please see Responses 1, 2, 3, 4, 14, 15, 21, 22, 31, and others that describe how the wastewater will be handled by the facility, what water quality criteria the effluent will have to meet, and what effluent limitations and other requirements are being proposed to address this concern if the permit is issued.

COMMENT 83:

Group #1 and Group #2 state that the public notice for this permit does not state the deadline by which communities must submit comments, nor does it give a duration for the public comment period.

RESPONSE 83:

The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI), was published on January 5, 2005. This notice did not contain a duration for public comment because the Notice of Application and Preliminary Decision (NAPD) is the notice that sets the time limit for public comment. At the time when a NORI is published, TCEQ cannot adequately ascertain on what date the Agency will make a preliminary decision on the application, or when the NAPD will be published. For this reason, the NORI contains the statement, "The Notice of Application and Preliminary Decision will be mailed to those who are on the county-wide mailing list or the mailing list for this application. That notice will contain

the final deadline for submitting public comments." The NAPD, for this application, was published on September 2, 2005, and contained the deadline for submitting public comments. The NAPD stated, "Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk within 30 days of the date of newspaper publication of this notice."

Since a public meeting was held on this application, the comment period for this application was extended. The comment period for this application ended at the close of the public meeting held on January 12, 2006, in Riesel, Texas.

COMMENT 84: Edward R. Cervenka asks how the communities in the Brazos River Basin were notified about the December 8, 2005, public meeting, and wants to know if there will be additional opportunities to comment. Mr. Cervenka requested additional opportunities for himself and all other Texas citizens to comment, since the pollutant discharge will affect all Texas citizens who eat fish and seafood products from the Brazos River and the Gulf of Mexico.

RESPONSE 84:

Communities and people downstream of the proposed facility were notified about the December 8 public meeting via newspaper publication in both the *Riesel Rustler* and *Waco Tribune Herald* newspapers. The Notice of Public Meeting on an Application for a Water Quality TPDES Permit for Industrial Wastewater was published in both papers on November 4, 2005.

Due to the fact that the December 8 public meeting was canceled, an additional opportunity for comment was extended through a public meeting held on January 12, 2005, in Riesel, Texas. The notice for this meeting was also published in both the *Riesel Rustler* and the *Waco Tribune Herald* on December 23, 2005.

COMMENT 85: Joyce Shannon asks if people downstream have been notified.

RESPONSE 85:

People living downstream of the discharge were notified through publication of the Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI) and the Notice of Application and Preliminary Decision (NAPD) which were both published in the *Riesel Rustler* and the *Waco Tribune Herald* newspapers. Additional notification would have occurred by letter if an individual downstream of the discharge was on either the county-wide mailing list or the mailing list maintained for this application. Adjacent landowners and those property owners within one mile downstream of the discharge point received mailed notice of the NORI and NAPD.

COMMENT 86: Philip Ballmann comments that this permit was placed in the Riesel newspaper which has 1,000 subscribers. This permit should be placed in a large newspaper such as the Waco Tribune. This notice on the waste-permit probably at the most reached only 200 people in McLennan County, Texas

RESPONSE 86:

The Notice of Receipt of Application and Intent to Obtain a Water Quality Permit (NORI), the Notice of Application and Preliminary Decision (NAPD), and both of the Notices of Public Meeting on an Application for a Water Quality TPDES Permit for Industrial Wastewater were published in the *Riesel Rustler* and the *Waco Tribune Herald* newspapers.

COMMENT 87: There are requests that an Environmental Impact Statement be performed for this permit application.

Fay Setzer and Roy Setzer hope that an environmental analysis is done, a treatment process is specified

in detail, specific plans for groundwater protection is made and a study of what the environmental impact on aquatic life on the Brazos River and the ponds is performed, and a study of what the effect will be on the towns down river who get their water from the Brazos River is done before proceeding to give the permit. Group #3 requests that a requirement of an environmental impact analysis be done, like an EIS, prior to proceeding to permitting. The group also requests that technical information is provided so that a complete evaluation can be done to determine the impact the discharge of these wastewaters will have on the Brazos River, adjoining wetland areas and on the wildlife and aquatic species that live there and in downstream segments. Jim Goodnow asks that an environmental impact study be initiated. Lewis Pulley asks why the TCEQ has not required a complete environmental impact analysis prior to proceeding to permitting. Philip Bauman states that the TCEQ works for the people of Texas. He states that when the people ask for an environmental impact study, they would like to see one. Ralph Cooper requests that the State conduct a comprehensive environmental impact assessment of this facility because coal is lost from train cars, coal is lost when the train cars are dumped, coal is lost when the wind blows, and coal is deposited on the land. The ash blows away. There is no such thing as an impervious barrier to protect the groundwater under this site. Randall W. Cervenka asks why there hasn't been a full environmental impact analysis prior to proceeding to permitting. Ricky Bates asks if there has been an environmental impact study regarding the pollutants at this panel discharge and questions how will it affect the immediate area and the entire Brazos and Bosque River watersheds. He also states that this permit needs to be denied until such time as a draft permit can be properly completed and an in-depth study done. Robert L. Cervenka and Jo Cervenka comment that the water permit proposes to dump water into the Brazos River without an Environmental Impact Study. Ruth Pilant requests an Environmental Impact Statement from L.S. Power before the permit is considered. Lorean Pulley asks if the National Environmental Policy Act has any bearing on the issues. Ralph Cooper believes that the TCEQ is required to do a NEPA process.

RESPONSE 87:

The National Environmental Policy Act (NEPA) requires federal agencies to integrate environmental values into their decision making processes by considering the environmental impacts of their proposed actions and reasonable alternatives to those actions. To meet this requirement, federal agencies must prepare a detailed statement known as an Environmental Impact Statement (EIS). This permit application and TCEQ's decision regarding the permit application are not federal actions. In addition, Sandy Creek's plant does not involve the use of federal funds. Therefore, an EIS is not required.

Please see Response 1 for a discussion of the proposed application review process, applicable water quality criteria, and effluent limitations proposed in the draft permit.

COMMENT 88: There is concern about a possible adverse effect from the steam that may be released from the cooling process of the proposed facility.

Eddie L. Thompson and Jeffery Thompson are concerned that the amount of vapor may cause adverse weather patterns in the area. Group #1 and Group #2 are concerned that the cooling process will give off large amounts of steam and volatile compounds which will condense and settle on the property of surrounding communities. They are concerned that the release of such steam will impact their quality of life. Group #3 states that the plans are to buy and use Waco wastewater at the plant with 70% of this water being evaporated, which will affect the humidity in the area. Jeffery Thompson is concerned about adverse affects from the vapor condensation from the discharges settling on his grazing land, and that this contaminated steam will reduce his and his family's quality of life. Randall W. Cervenka states that emissions from the plant will affect the water supply of several communities down river from the plant. Randall W. Cervenka and Robert L. Cervenka state that this application plans to buy and use Waco wastewater with 70% of the water being evaporated, which will affect the humidity and add the smell of waste to the surrounding area. Randall W. Cervenka states that emissions from the plant will affect his day to day living. Randall W. Cervenka states that emissions from the plant will affect the water supply of several communities down river from the plant. Robert L. Cervenka and Jo Cervenka state that they don't know what vaporizing 60- 70% of the stinking sewer water will do to their area, and that they are

concerned that this much humidity close to the plant would bring down toxic waste on their home and land.

RESPONSE 88:

This is an industrial wastewater permit application. Air quality is outside the scope of this permit review. Concerns regarding the steam emissions by the Sandy Creek facility should be raised in connection with the facility's air permit application. This particular permit only addresses issues relating to water quality in connection with the facility's proposed wastewater discharge. However, TCEQ is the agency responsible for enforcing air pollution laws. The permittee is responsible for obtaining any air-related permits needed. Should the nature of the facility's operations require, the applicant may be obligated to secure separate permits which regulate (air, water, waste) quality.

COMMENT 89: There is concern about air pollution and deposition from air pollution.

Group #3 is concerned about the coal constituents affecting the aquatic life in the rivers and lakes of the Brazos and Bosque River Basins. They feel the aquatic organisms may be threatened. Lewis Pulley states that deposition of coal constituents may affect aquatic life in the rivers and lakes of the Bosque and Brazos River Basins, including whether the fish will be edible and whether they will be able to reproduce. Joyce Shannon states that she has some small ponds on the place she lives and she is worried about the disposal and how it will be handled. Sarah Heger is concerned about pollution to the Bosque River. Edward R. Cervenka wants to know if the permit application evaluates the environmental impacts of the air emissions of lead and mercury that will fall into the Brazos River Basin, and if the application evaluates the environmental impacts of the coal dust that escapes during transportation and falls into the Brazos River Basin. Philip Ballmann states that he grows crops such as corn and oats, and states that this level of pollution will affect his soils and weather concerning his crops. He is also concerned that his cattle will be affected by the excess sulfur that will be discharged by the plant. Philip Ballmann is also concerned that this plant, if built, will make the area a "non-attainment" area, and that there needs to be air monitors in the area. Group #3 states that the mercury emissions from this plant will go all over the country and counties downriver, and that mercury emissions from mercury from coal waste will end up in waterways, contributing to mercury contamination of fish. Group #3 also states that the emissions will fall on land and will end up in the river. It will affect the drinking water for Waco and the surrounding communities as well as any drinking water taken from the river anywhere downstream. Group #3 wants to know about the coal constituents affecting the aquatic life in the rivers and lakes of the Brazos and Bosque River Basins. The aquatic organisms may be threatened. Group #3 and Lewis Pulley state that there is no analysis of how the river and Waco wastewater will be changed by this plant. For example, the air emissions of mercury, lead and other coal constituents will increase deposition of these in the Bosque River Basin, leading to increased concentrations in the Waco water supply and Waco wastewater, as well as the Brazos River. Additional deposition will occur in the Brazos River Basin, contributing additional contaminant loads in that portion of the river flow. Robert L. Cervenka and Jo Cervenka state that the coal fired power plant will pollute the air they breathe. Randall W. Cervenka states that there is no analysis of the effect of coal dust during transportation and handling of the coal and water resources in the region. He wants to know what effects this plant will have on our water supply concerning the air emissions. Terry Henderson states that the particulates and gases released by the plant will contaminate bodies of water in and around the plant including Lake Waco, which are a source of drinking water for his family and a source of live fish for his family to eat. He also states that the statement that the lawyers for the plant made in court in the preliminary hearing on the air permit claim that the majority of the airborne pollution will land on the plant site. There is no provision in the water permit addressing how the plant will prevent rain water contaminated with the plant's airborne emissions from draining into and polluting

the river. Terry Henderson is also concerned about the impact of this plant from years of raining down particulates containing significantly unhealthy chemicals in the area. He is concerned that this will cause the lakes and streams to be off limits for fishing. Lorean Pulley states that she and her family enjoy eating the fish from her pond, which will be contaminated with mercury and other pollution. Randall W. Cervenka states that deposition of coal constituents may affect aquatic life in surrounding bodies of water and river. Lewis Pulley states that deposition of coal constituents may affect aquatic life in the rivers and lakes of the Bosque and Brazos River Basins, including whether the fish will be edible and whether they will be able to reproduce. Brett Sanders is concerned about air pollution and mercury poisoning. John Schraeder and Doris Schraeder are concerned about coal dust. John Hendry is concerned about air degradation. Will Dailey is concerned that the mercury emissions from coal will end up in the waterways and contaminate the fish. Tom Smith wants to know where the mercury that comes off the coal and out of the coal ash go. Ricky Bates states that this plant will be putting out large amounts of mercury and other EPA listed pollutants that will eventually come back into the ground somewhere and be washed into the water system. John Devries is concerned about air pollution. Ralph Cooper states that Waco drinking water will be contaminated with mercury, lead, selenium and a number of other toxic contaminants. Randall W. Cervenka states that deposition of coal constituents in the Bosque River Basin will lead to increased concentrations in the Waco water supply and Waco wastewater as well as the Brazos River. He asks how such increases in contaminate loads will affect the drinking water for Waco and surrounding communities from bodies of water, rivers and ground water, both above and below discharge points of this plant, and if it will not affect the drinking water, why not. Randall W. Cervenka states that emissions from the plant will affect the water supply of several communities down river from the plant. Randall W. Cervenka states that emissions from the plant will affect his day to day living.

RESPONSE 89:

This particular permit only addresses issues relating to water quality in connection with the facility's proposed wastewater discharge. However, TCEQ is the agency responsible for enforcing air pollution laws. The permittee is responsible for obtaining any air-related permits needed. Should the nature of the facility's operations require, the applicant may be obligated to secure separate permits which regulate (air, water, waste) quality.

Changes to the draft permit have been made in response to public comment.

Other Requirement No. 7 had been changed to include effluent analysis for volatile and acid compounds found in Table 7 of the Industrial Wastewater Technical Report. Dissolved oxygen has also been added as one of the constituents to be sampled and analyzed.

Other requirement No. 10 had been clarified and now reads:

The draft permit also requires that wastewater ponds (including the coal pile runoff pond) be lined according to one of the following requirements:

1. Soil Liner: The soil liner shall contain at least 3 feet of clay-rich (liquid limit greater than or equal to 30 and plasticity index greater than or equal to 15) soil material along the sides and bottom of the pond compacted in lifts of no more than 9 inches, to 95% standard proctor density at the optimum moisture content to achieve a permeability equal to or less than 1×10^{-7} cm/sec.

2. Synthetic/Plastic/Rubber Liner: The liner shall be either a plastic or rubber membrane liner at least 30 mils in thickness which completely covers the sides and the bottom of the pond and which is not subject to degradation due to reaction with wastewater with which it will come into contact. If this lining material is vulnerable to ozone or ultraviolet deterioration it should be covered with a protective layer of soil of at least 6 inches. A leak detection system is also required.
3. Alternate Liner: The permittee shall submit plans for any other pond lining method. Pond liner plans must be approved in writing by the Executive Director of the Texas Commission on Environmental Quality prior to pond construction.

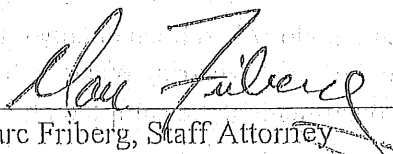
Other Requirement No. 12 has been added and reads:

The permittee shall resample the effluent for all pollutants required for steam electric stations in the TCEQ's industrial wastewater permit application if the source of coal used at the facility changes from the Powder River basin.

Respectfully submitted,

Texas Commission on Environmental Quality
 Glenn Shankle
 Executive Director

Stephanie Bergeron Perdue, Director
 Environmental Law Division

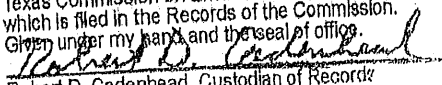

 Marc Friberg, Staff Attorney
 Environmental Law Division
 State Bar No. 24048472
 P.O. Box 13087, MC 173
 Austin, Texas 78711-3087
 (512) 239-0611

REPRESENTING THE
 EXECUTIVE DIRECTOR OF THE
 TEXAS COMMISSION ON
 ENVIRONMENTAL QUALITY

STATE OF TEXAS §
 COUNTY OF TRAVIS §

APR 18 2008

I hereby certify that this is a true and correct copy of:
 Texas Commission on Environmental Quality document
 which is filed in the Records of the Commission.
 Given under my hand and the seal of office.


 Robert D. Cadenhead, Custodian of Records
 Texas Commission on Environmental Quality